NO. 114 Original	TITLE State of Louisiana, Plaintiff v. State of Mississippi, et al.

DOCKETED	COURT
Sept. 15, 1988	Motion for leave to file Bill of Complaint

DATE	PROCEEDINGS AND ORDERS
	Counsel for plaintiff: Gary L. Keyser
	Counsel for Defendants: Robert E. Sanders
Sept. 15, 1988	Motion for leave to file bill of complaint filed.
Sept. 15, 1988	Application for stay, (A-239) presented to Justice White and by him referred to the Court for the Sept. 26, 1988 Conference.
Sept. 22, 1988	DISTRIBUTED. Sept. 26, 1988. (Application for stay).
Sept. 24, 1988	Record filed.
Oct. 3, 1988	The application for stay of proceedings in the United States District Court for the Southern District of Mississippi in the case of Julia Donelson Houston, et al. v. Ruth M. Thomas, et al., C. A. No. W86-0080(B), presented to White, J., and by him referred to the Court is denied.
Nov. 4, 1988	Brief in opposition filed.
Nov. 8, 1988	DISTRIBUTED. Nov. 23, 1988 (Motion for leave to file and brief in opposition).
Nov. 30, 1988	DISTRIBUTED. Dec. 2, 1988.
Dec. 5, 1988	REDISTRIBUTED. Dec. 9, 1988.
Dec. 12, 1988	The motion for leave to file a bill of complaint is denied. Dissenting opinion by White, J., with whom Stevens and Scalia, JJ., join. Brennan, J., OUT.

No. 114 Original

Supreme Court, U.S.
FILED
SEP 15 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

October Term, 1988

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL.,

Defendants.

MOTION TO FILE COMPLAINT, COMPLAINT AND APPLICATION FOR STAY ORDER, AND BRIEF IN SUPPORT OF MOTION, COMPLAINT AND APPLICATION FOR STAY ORDER

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State of Louisiana

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EXHIBITS:

"A"—Complaint To Remove Cloud in case of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Western Division of the Southern District of Mississippi, with attached Exhibits 1a

"B"—Motion For Leave To Amend Complaint in case of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Western Division of the Southern District of Mississippi 29a

"C"—Motion For Intervention Of State Of Louisiana And Lake Providence Port Commission in case of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Western Division of the Southern District of Mississippi, with attached Memorandum In Support and Order 37a

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"E"—Response To Intervention in case of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Western Division of the Southern District of Mississippi, with attached Scheduling Order 51a

"F"—Third-Party Complaint of State of Louisiana and Lake Providence Port Commission in case of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Western Division of the Southern District of Mississippi, with attached Motion and Order 61a

"G"—Answer of The State of Mississippi To Third-Party Complaint in case of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Western Division of the Southern District of Mississippi 71a

No. _____ Original

In The Supreme Court of the United States

October Term, 1988

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL.,

Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT AND FOR STAY ORDER

The State of Louisiana, appearing herein through the Honorable William J. Guste, Jr., its Attorney General, acting in pursuance of the authority and powers vested in him by Article IV, Section 8 of the Louisiana Constitution, respectfully states that:

1. A portion of the boundary between the States of Louisiana and Mississippi common to the Parish of East Carroll, Louisiana, and the County of Issaquena, Mississippi, is in dispute.

2. This boundary dispute between the States is subject to the exclusive original jurisdiction of the Supreme Court of the United States.

3. An action is presently pending in the United States District Court, Western Division of the Southern District of Mississippi, entitled *Julia Donelson Houston, et al, vs. Ruth M. Thomas, et al.*, Civil Action No. W86-0080(B), wherein, as shown by Exhibit "A", the Complaint to Remove Cloud, complainants in said civil action are claiming ownership of a portion of lands involved in

this boundary dispute, contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Louisiana under its inherent sovereignty.

4. The above referenced action is styled as a Complaint To Remove Cloud and identifies numerous plaintiffs as the owners in fee simple of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, as against numerous defendants as residents and domiciliaries of the State of Louisiana.

5. Complainants in the district court recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in Paragraph 54 of the Complaint.

6. Complainants allege in paragraphs 55 and following that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

7. The State of Louisiana and the Lake Providence Port Commission, a political subdivision of the state, intervened in the federal district court action in June, 1987, asserting that their rights arise under the Constitution of the United States and an Act of Congress approved April 8, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found at 2 Stat 701 (U.S. Statutes at Large, Vol. 2, chap. 50, p. 701).

8. No further action has been had in the case since the intervention of the State of Louisiana and the Lake Providence Port Commission, except that the case has been scheduled for pre-trial conference on September 26, 1988, in the District Court.

WHEREFORE, the State of Louisiana respectfully

prays that this Honorable Court take original jurisdiction and grant to plaintiff, State of Louisiana, leave to file its complaint in this Court, and that this Honorable Court issue an order directed to the United States District Court, Western Division of the Southern District of Mississippi, placing in abeyance all proceedings in the action entitled, *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Civil Action No. W86-0080(B), pending the conclusion and determination of the matter set forth in this Complaint, and further prays for such orders and process as the Court may deem proper in pursuance of the annexed complaint and application for order.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

GARY L. KEYSER
DAVID C. KIMMEL
Assistant Attorneys General

September, 1988

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No. _____ Original

In The Supreme Court of the United States

October Term, 1988

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL

Defendants.

COMPLAINT AND APPLICATION FOR STAY ORDER

The State of Louisiana, appearing herein through the Honorable William J. Guste, Jr., its Attorney General, acting pursuant to the authority and powers vested in him by Article IV, Section 8 of the Louisiana Constitution, institutes this original action against the State of Mississippi, and makes party hereto the following citizens of the State of Mississippi, namely, Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, deceased, adult residents and citizens of Mississippi, and Ruth Houston Baker, individually, an adult domiciled in Harris County, Texas, and for its cause of action, states:

I.

The original jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of

the United States and Par. (a) Section 1251, Title 28, United States Code Annotated.

II.

The State of Louisiana was admitted into the Union of the United States of America by the Act of Congress found in chapter 50 of the United States Statutes at Large, vol. 2, page 701, approved April 8, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said Act, were described as follows:

"Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of 'Louisiana' by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three (8 Stat. at L. 200), between the United States and France, contained within the following limits, that is to say: 'Beginning at the mouth of the river Sabine; thence, by a line drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast. . . .' "

III.

By the Act of Congress found in the United States Statutes at Large, vol. 2, p. 708, chap. 57, approved April 14, 1812, additional territory was added to the then-exist-

ing State of Louisiana, which additional territory was described in the following language:

"Beginning at the junction of the Iberville with the river Mississippi; thence, along the middle of the Iberville, the river Amite, and of the lakes Maurepas and Pontchartrain to the eastern mouth of the Pearl River; thence up the eastern branch of Pearl River to the thirty-first degree of north latitude; thence along the said degree of latitude to the river Mississippi; thence down the said river to the place of beginning, shall become and form a part of the said state of Louisiana. . . ."

IV.

The territory lying adjacent to, and to the eastward of the State of Louisiana, is the State of Mississippi, which latter state was admitted into the Union of the United States of America by the Act of Congress, approved March 1, 1817, 3 Stat 348 (U.S. Statutes at Large, vol. 3, chap. 23, page 348), whereby the inhabitants of the western part of the then-Mississippi territory were authorized to form for themselves a state constitution and to be admitted into the Union, the boundaries of the then-to-be-created state being described as follows:

"Beginning on the river Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Washington 'Alabama'; thence due south to the gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore to the most eastern junction of Pearl River with lake

Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning."

V.

The effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the channel or thread, sometimes known as the thalweg, of the Mississippi River as the original eastern boundary, as far south as the 31st degree of north latitude. Such original eastern boundary from the northeast tip of the State of Louisiana to said 31st degree of north latitude is common with the State of Mississippi.

VI.

Under the law of Louisiana, the State of Louisiana owns the bed of the Mississippi River to the boundary line of the States of Louisiana and Mississippi. Under the law of the State of Mississippi, the riparian owner owns to the boundary line between said states. This Supreme Court of the United States has original jurisdiction of suits to determine the boundaries between states, and of parties adversely asserting title to the property of a state.

VII.

Until recently the primary interest in the determination of the exact boundary line in the Mississippi River between the two states has been as to navigation and fishing rights, and to masses of land where an avulsion has taken place.

VIII.

On the 29th day of July, 1986, there was filed in the

United States District Court, Western Division of the Southern District of Mississippi, a complaint entitled *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Civil Action No. W86-0080(B), as shown by Exhibit "A", attached hereto and made a part hereof. This Complaint To Remove Cloud filed against Louisiana residents and attacking the ownership of property of the State of Louisiana, raises the question and issue in this case as to the true location of the boundary between the States of Louisiana and Mississippi common to the Parish of East Carroll, Louisiana, and the County of Issaquena, Mississippi.

IX.

In the said action presently pending in the United States District Court, as aforesaid, complainants claiming ownership of a portion of lands involved in this boundary dispute contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Louisiana under its inherent sovereignty.

X.

The above referenced action filed herein is styled as a Complaint To Remove Cloud and identifies numerous plaintiffs as the owners in fee simple of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, as against numerous defendants as residents and domiciliaries of the State of Louisiana.

XI.

Complainants in the district court recite their title as having derived from patents of the United States of

America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the Complaint.

XII.

Complainants allege in paragraphs 55 and following, that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

XIII.

The State of Louisiana and the Lake Providence Port Commission, a political subdivision of the state, intervened in the federal district court action in June, 1987, asserting that their rights arise under the Constitution of the United States and an Act of Congress approved April 8, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found at 2 Stat 701 (U.S. Statutes at Large, Vol. 2, chap. 50, p. 701). See Exhibits "C" and "D".

XIV.

The original complainants responded to the intervention, Exhibit "E", and thereafter the State of Louisiana and the Lake Providence Port Commission filed a Third-Party Complaint against the State of Mississippi, Exhibit "F". The State of Mississippi answered the Third-Party Complaint, Exhibit "G", and the matter has been fixed for pre-trial conference on September 26, 1988 (see Scheduling Order attached to Exhibit "E").

XV.

The real question in dispute between plaintiff and defendants is the true location of the boundary line be-

tween the State of Louisiana and the State of Mississippi, which is dependent upon a determination of the location of the live thalweg, which follows the course of the Mississippi River itself as its bed and channel move with the gradual processes of accretion and erosion.

XVI.

However, the determination of this river boundary also involves as interpretation of the acts of Congress setting forth the boundaries and determination of the boundaries between said two states, as well as the equal footing doctrine applicable to the states of the United States.

XVII.

Further, the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat 80, is also involved in this controversy, including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which can only be made pursuant to the Constitution of the United States and federal law.

XVIII.

Consequently, in the necessary and essential exercise of sovereign rights, the exact location of the boundary line between Mississippi and Louisiana in the area at controversy becomes of major and substantial significance to the respective states, in view of the great value of the lands and water bottoms for navigational, hunting, fishing, timber and recreational purposes, as well the potential for the production of oil, gas and other minerals. Heretofore, it has not been necessary to determine with

preciseness the exact location of such boundary line. This controversy now makes such a determination essential to the two sovereign states, as well as to their citizens.

XIX.

The property rights, the sovereign rights and the sanctity of the boundary between the States of Louisiana and Mississippi are inextricably involved in the private litigation which commenced this controversy, thus instituted and pending in the United States District Court for the Western Division of the Southern District of the State of Mississippi, and said Court is not the forum proper to such determinations. Nor is the State of Louisiana required to submit its title to said Court, nor should it be.

XX.

The decision of the Supreme Court of the United States herein will be conclusively binding on all private parties and it alone has the power to fix and determine the boundary lines herein described. The suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, should be stayed by Order of this Court until a final judgment herein can be had, and application is hereby made by the State of Louisiana for an Order to be issued by this Court, directed to the United States District Court, Western Division of the Southern District of Mississippi, staying all proceedings in said suit.

XXI.

The jurisdiction of the Supreme Court of the United States in boundary disputes between States is exclusive and original and accordingly it is appropriate that the suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas,*

et al., be stayed and all parties thereto be served with a copy of the Stay Order herein applied for, and be given the opportunity to assert such interests as they may have in this action.

WHEREFORE, PREMISES CONSIDERED, Complainant prays:

1. That process issue herein to all parties as required by law.

2. That an order be issued promptly to the United States District Court for the Western Division of the Southern District of the State of Mississippi, staying any further proceedings in the suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.* C.A. No. W86-0080(B), on the docket of said Court, until final judgment has been rendered herein or until further order of this Court.

3. That, on final hearing hereof, the eastern boundary line of the State of Louisiana at its juncture or co-terminous location with the western boundary line of the State of Mississippi in the vicinity of the navigable channel of the Mississippi River, common to the Parish of East Carroll, Louisiana and the County of Issaquena, Mississippi, should be fixed, recognized and determined.

4. That the claim of title asserted by Julia Donelson Houston, et al., in and to the lands and water bottoms described herein be herewith cancelled and forever held for naught.

And for such order and further relief, general or special, as may be proper.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

GARY L. KEYSER
DAVID C. KIMMEL
Assistant Attorneys General

September, 1988

Office of the Attorney General
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BRIEF OF THE STATE OF LOUISIANA IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE ORIGINAL SUIT AND FOR STAY ORDER

OPENING STATEMENT

As set forth in the Motion with Complaint annexed herein filed by the State of Louisiana, the proposed suit involves a determination of the exact location of a portion of the eastern boundary line of the State of Louisiana common with the State of Mississippi and the cancelling of the claims of certain named private parties to property rights of the State of Louisiana under the bed of the Mississippi River, as well as to accreted lands known as Island No. 94 or Stack Island.

I.

JURISDICTION OF SUITS BETWEEN STATES

The Supreme Court of the United States has exclusive original jurisdiction of all controversies between states. As set forth in Par. 2, Sec. 2, Article III of the Constitution:

> "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction."

As set forth in Section 1251, Title 28, U.S.C.A.(a);

> "(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more states."

II.

THE MOTION FOR LEAVE TO FILE SHOULD BE GRANTED

Jurisdiction vests since this is a suit between the States of Louisiana and Mississippi in which private persons are also proper parties due to the nature of the boundary dispute.

The value of the property involved in great. The rights of the State of Louisiana are real and substantial. The controversy exists and is justiciable. The Supreme Court of the United States is the only forum to settle this dispute, fix the boundary line between the states, and determine finally the rights of the parties. See *Florida v. Georgia*, 17 How. 478 (1854); *Oklahoma v. Texas*, 158 U.S. 574, 66 L.Ed. 771, 42 Sup. Ct. 406 (1922).

This court has entertained jurisdiction in such controversies on numerous occasions, and has done so in several prior Mississippi River boundary cases between Louisiana and Mississippi, as in *Louisiana v. Mississippi*, 202 U.S. 1, 50 L.Ed. 913, 26 S.Ct. 408 (1906); *Louisiana v. Mississippi*, 282 U.S. 458, 75 L.Ed. 459, 51 S.Ct. 197 (1931); and *Louisiana v. Mississippi*, 384 U.S. 24, 16 L.Ed. 2d 330, 86 S.Ct. 1250 (1966).

III.

POWER TO STAY

In the aid of its original jurisdiction, the Supreme Court has the power and authority to issue stays not only inherently but also by Sec. 1651(a), Title 28 U.S.C.A., which reads:

"(a) The Supreme Court and all courts established

> by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

See *Ex Parte Republic of Peru*, 318 U.S. 578, 87 L.Ed. 1014, 63 S.Ct. 793 (1943).

As stated in *Landis v. North American Co.*, 299 U.S. 248, 81 L.Ed. 153, 57 S.Ct. 163 (1936):

> "Apart, however, from any concession, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.

The Court has exercised its power to stay proceedings in other Mississippi River boundary cases, as in the recent case of *State of Louisiana vs. State of Mississippi*, 466 U.S. 96, 80 L.Ed. 2d 74, 104 S.Ct. 1645 (1984), and should so issue a stay in this case.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

GARY L. KEYSER
DAVID C. KIMMEL
Assistant Attorneys General

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Lands and Natural Resources Division
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504-342-7900

PROOF OF SERVICE

The undersigned, counsel for the State of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certifies that copies of the foregoing Motion of the State of Louisiana for leave to file original action with Complaint and Brief annexed, and Appendix, have been served by depositing same in a United States mailbox with postage prepaid, addressed to:

Honorable Ray Mabus
Governor of Mississippi
Post Office Box 139
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Honorable Michael Moore
Attorney General
State of Mississippi
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Archie L. Jefferson, Esq.
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M. E. Ward, Esq.
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Vicksburg, Mississippi 39180

this _____ day of September, 1988.

_____

GARY L. KEYSER
Assistant Attorney General

APPENDIX

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EXHIBIT A

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

---

JULIA DONELSON HOUSTON, RUTH HOUSTON BAKER AND HINES H. BAKER, JR., CO-EXECUTORS AND CO-TRUSTEES OF THE ESTATE OF GEORGE T. HOUSTON, a/k/a GEORGE T. HOUSTON, III, DECEASED; AND RUTH HOUSTON BAKER, INDIVIDUALLY,

Plaintiffs,

vs.

RUTH M. THOMAS; BESSIE PRICE TALBERT PURDY; MRS. EDITH P. HOUSTON; EDMOND SUSAN BELL FOLK; SARAH ANN SCHNEIDER BOTKIN; SARA ANN SCHNEIDER MOTT; FREDERICK HALL SCHNEIDER, III; GAY SCHNEIDER WARREN; NANETTE SCHNEIDER MILLER; LISA M. MILLER; OWEN S. BROWN, JR.; MARY VIRGINIA BROWN; WILLIAM F. NAFF; JOHN O. NELSON, JR.; TOM ED NELSON; ALBERT P. SURLES, JR.; WALTER ELVIS SURLES; ALBERT P. SURLES; HAZEL T. WHITE; ELIZABETH DELONY REED; VAIL DELONY BALDRIDGE; ELIZABETH LOUISE MILLER DELONY, ADMINISTRATRIX OF THE SUCCESSION OF VAIL M. DELONY; GENEVIEVE BROWN SHORTER; CHARLIE BUTLER; BETTYE JOE SHORTER PRINCE; FRED ROGERS SHORTER; WILLIE B. SHORTER; EDWARD LEO SHORTER; SAM L. HOUSE, JR.; MILDRED A. HOUSE; SAM THOMAS BATTON; AUDREY H. BATTON;

GLADSTONE CORPORATION; ANNIE ROSE W. GILFOIL; JAMES HENRY GILFOIL, III; WILLIAM D. BROWN, III; GRADY WYLY BROWN; PHILIP B. BROWN; JAMES GRADY WYLY, JR.; ANNIE ETHEL WYLY; WILLIAM NORRIS WYLY; BONNIE G. WYLY; HOLLYBROOK LAND COMPANY, INCORPORATED; ED M. LOWRANCE, TRUSTEE, FOR HELEN C. LOWRANCE; HELEN C. LOWRANCE; OGDEN RUSSELL; KATHLEEN P. RUSSELL; FEDERAL DEPOSIT INSURANCE CORPORATION; THE UNKNOWN HEIRS AT LAW OR DEVISEES OF SAM ERNEST SHORTER; THE UNKNOWN HEIRS AT LAW OR DEVISEES OF SAM EARL SHORTER; THE UNKNOWN HEIRS AT LAW OR DEVISEES OF SAM SHORTER, JR.; AND THE UNKNOWN HEIRS AT LAW OR DEVISEES OF ELLA N. BELL,

Defendants.

COMPLAINT TO REMOVE CLOUD

COME NOW the Plaintiffs, Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., the duly qualified Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, Deceased, and Ruth Houston Baker, individually, also known as Ruth Houston Jarvis Baker, an adult domiciled in Harris County, Texas, and file this their Complaint against Ruth M. Thomas, Bessie Price Talbert Purdy, Mrs. Edith P. Houston, Edmond Susan Bell Folk, Sarah Ann Schneider Botkin, Sara Ann Schneider Mott, Frederick Hall Schneider, III, Gay Schneider Warren, Nanette Schneider Miller, Lisa M. Miller, Owen S. Brown, Jr., Mary Virginia Brown, William F. Naff, John O. Nelson, Jr., Tom Ed Nelson, Albert P. Surles, Jr., Walter Elvis Surles, Albert P. Surles, Hazel T. White, Mrs. Elizabeth Louise Miller Delony, Administratrix

of the Succession of Vail M. Delony, Elizabeth Delony Reed, Vail Delony Baldridge, Genevieve Brown Shorter, Charlie Butler, Bettye Joe Shorter Prince, Fred Rogers Shorter, Willie B. Shorter, Edward Leo Shorter, Sam L. House, Jr., Mildred A. House, Sam Thomas Batton, Audrey H. Batton, Gladstone Corporation, Annie Rose W. Gilfoil, James Henry Gilfoil, III, William D. Brown, III, Grady Wyly Brown, Philip B. Brown, James Grady Wyly, Jr., Annie Ethel Wyly, William Norris Wyly, Bonnie G. Wyly, Hollybrook Land Company, Incorporated, Ed M. Lowrance, Trustee, for Helen C. Lowrance, Helen C. Lowrance, Ogden Russell, Kathleen P. Russell, Federal Deposit Insurance Corporation, the unknown heirs at law or devisees of Sam Ernest Shorter, the unknown heirs at law or devisees of Sam Earl Shorter, the unknown heirs at law or devisees of Sam Shorter, Jr., and the unknown heirs at law or devisees of Ella N. Bell and for cause of action would show unto the Court the following:

1. The Plaintiffs, Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., are the duly qualified Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, deceased, who died testate in 1985, with a fixed place of residence in Mississippi. The plaintiff Julia Donelson Houston is an adult resident citizen of Warren County, Mississippi. The Plaintiffs, Ruth Houston Jarvis Baker and Hines H. Baker, Jr. are adult resident citizens of Harris County, Texas.

2. The Defendants herein are named in Paragraph 4 through 51, inclusive. None of the said Defendants are residents of the State of Mississippi.

3. This Court has jurisdiction of this action under 28

U.S.C., §1332. The amount in controversy exceeds $10,000.00 exclusive of interest and costs. This action is local in nature in that the land that is the subject matter of this action is located in Issaquena County, Mississippi.

4. Ruth M. Thomas is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address is P. O. Box 832, Lake Providence, Louisiana 71254 but that her street address is unknown to Plaintiff's after having made diligent inquiry to ascertain the same.

5. Bessie Price Talbert Purdy is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 333 Lee Drive, #16, Baton Rouge, Louisiana 70808.

6. Mrs. Edith P. Houston is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 333 Lee Drive, #16, Baton Rouge, Louisiana 70808.

7. Edmond Susan Bell Folk is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1212 LaSalle Street, Tallulah, Louisiana 71282.

8. Sarah Ann Schneider Botkin is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1103 Bayou Drive, Tallulah 71282.

9. Sara Ann Schneider Mott is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 2935 Valcour-Aime, Baton Rouge, Louisiana 70820.

10. Frederick Hall Schneider, III is an adult non-

resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is Route 2, Box 130, Lake Providence, Louisiana 71254.

11. Gay Schneider Warren is an adult non-resident of the State of Mississippi, domiciled in Colorado, whose post office address and street address is 1415 East Tufts Drive, Englewood, Colorado 80110.

12. Nanette Schneider Miller is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 6711 Querbes Drive, Shreveport, Louisiana 71106.

13. Lisa M. Miller is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address is P. O. Box 222, Lake Providence, Louisiana 71254, but that her street address is unknown to Plaintiffs after having made diligent inquiry to ascertain the same.

14. Owen S. Brown, Jr. is an adult non-resident of the State of Mississippi, domiciled in Oklahoma, whose post office address and street address is 1704 Bedford Dr., Oklahoma City, Oklahoma 73116.

15. Mary Virginia Brown is an adult non-resident of the State of Mississippi, domiciled in Canada, whose post office address and street address is 158 Cresent Road, Apt. 310, Toronto, Canada.

16. William F. Naff is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is Rt. 1, Box 159, Sondheimer, Louisiana 71276.

17. John O. Nelson, Jr., is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post

office address and street address is 404 Fairfield St., West Monroe, Louisiana 71291.

18. Tom Ed Nelson is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address is P. O. Box 787, Lake Providence, Louisiana 71254, but that his street address is unknown to Plaintiffs after having made diligent inquiry to ascertain the same.

19. Albert P. Surles, Jr. is an adult non-resident of the State of Mississippi, domiciled in Texas, whose post office address and street address is 2017 Maple Leaf Drive, Plano, Texas 75074.

20. Walter Elvis Surles is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 2213 Valencia Street, Monroe, Louisiana 71286.

21. Albert P. Surles is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1100 Sparrow Street, Lake Providence, Louisiana 71254.

22. Hazel T. White is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1212 Sparrow Street, Lake Providence, Louisiana 71254.

23. Elizabeth Delony Reed is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1002 Lake Street, Lake Providence, Louisiana 71254.

24. Vail Delony Baldridge is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1002 Lake Street, Lake Providence, Louisiana 71254.

25. Elizabeth Louise Miller Delony is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1002 Lake Street, Lake Providence, Louisiana 71254. The said Elizabeth Louise Miller Delony is the Administratrix of the Succession of Vail M. Delony, having taken the oath of Administratrix on January 10, 1968, after having been appointed as such by order of the Court of the Sixth Judicial District of East Carroll Parish, Louisiana.

26. Genevieve Brown Shorter is an adult non-resident of the State of Mississippi, domiciled in the State of Louisiana, whose post office address is Box 82, Lake Providence, Louisiana 71254, but that her street address is unknown to Plaintiffs after having made diligent inquiry to ascertain the same.

27. Edward Leo Shorter is an adult non-resident of the State of Mississippi, domiciled in the State of Louisiana, whose post office address is Box 82, Lake Providence, Louisiana 71254, but that his street address is unknown to Plaintiffs after having made diligent inquiry to ascertain the same.

28. Charlie Butler is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address is Box 82, Lake Providence, Louisiana 71254, but that his street address is unknown to Plaintiffs after having made diligent inquiry to ascertain the same.

29. Bettie Joe Shorter Prince is an adult non-resident of the State of Mississippi, domiciled in the State of Washington, whose post office address and street address is 3804 Northeast 93rd Street, Seattle, Washington 98115.

30. Fred Rogers Shorter is an adult non-resident of

the State of Mississippi, domiciled in the State of Illinois, whose post office address and street address is 119 East 120th St., Chicago, Illinois 60628.

31. Willie B. Shorter is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 1490 Sora Street, Baton Rouge, Louisiana 70807.

32. Sam L. House, Jr. and his wife, Mildred A. House, are adult non-residents of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is Route 2, Box 60, Lake Providence, Louisiana 71254.

33. Sam Thomas Batton and his wife, Audrey H. Batton, are adult non-residents of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 412 Schneider Lane, Lake Providence, Louisiana 71254.

34. Gladstone Corporation is a foreign or non-resident corporation, domiciled in Louisiana, whose agent for service of process is Virginia Wyly, whose post office address and street address where she may be served with process for said corporation is 3325 East Lakeshore Drive, Baton Rouge, Louisiana 70808.

35. Annie Rose W. Gilfoil is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address is P. O. Box 546, Lake Providence, Louisiana 71254, but that her street address is unknown to Plaintiffs after having made diligent inquiry to ascertain the same.

36. James Henry Gilfoil, III is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post

office address is P.O. Box 546, Lake Providence, Louisiana 71254, but that his street address is unknown to Plaintiff's after having made diligent inquiry to ascertain the same.

37. William D. Brown, III is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is P. O. Box 2306, 2212 Pargood Blvd., Monroe, Louisiana 71207.

38. Grady Wyly Brown is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is Rt. 2, Lake Providence, Louisiana 71254.

39. Philip B. Brown is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address is P. O. Box 287, Lake Providence, Louisiana 71254, but that his street address is unknown to Plaintiff's after having made diligent inquiry to ascertain the same.

40. James Grady Wyly, Jr. is an adult non-resident of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is 705 Fifth Street, Lake Providence, Louisiana 71254.

41. Annie Ethel Wyly is an adult non-resident of the State of Mississippi, domiciled in the State of Florida, whose post office address and street address is 2910 NW 166th Street, Opelaka, Florida 33054.

42. William Norris Wyly and his wife, Bonnie G. Wyly, are adult non-residents of the State of Mississippi, domiciled in Louisiana, whose post office address and street address is Rt. 1, Box 35, Lake Providence, Louisiana 71254.

43. Hollybrook Land Company, Incorporated, is a

Louisiana corporation whose registered agent for service of process is D. M. Amacker, whose post office address and street address where he may be served with process for said corporation is 601 1st Street, Lake Providence, Louisiana 71254.

44. Ed M. Lowrance, Trustee by virtue of the Judgment of Possession in the Succession of Zelda Cline Lowrance, is an adult non-resident of the State of Mississippi, domiciled in Tennessee, whose post office address and street address is 2902 Midland, Memphis, Tennessee, 38111. The said Ed M. Lowrance is a defendant herein by virtue of being one of the beneficiaries of the certain mortgage granted in favor of he and Helen C. Lowrance by Hollybrook Land Company, Incorporated, said mortgage being dated April 24, 1981, and being recorded in Book 107 at Page 9 in the Land Records of East Carroll Parish, Louisiana.

45. Helen C. Lowrance is an adult non-resident of the State of Mississippi, domiciled in Tennessee, whose post office address and street address is 232 S. Highland St., Memphis, Tennessee 38111. The said Helen C. Lowrance is a defendant herein by virtue of being one of the beneficiaries of the certain mortgage granted in favor of her and Ed M. Lowrance, Trustee by virtue of the Judgment of Possession in the Succession of Zelda Cline Lowrance, by Hollybrook Land Company, Incorporated, said mortgage being dated April 24, 1981, and being recorded in Book 107 at Page 9 in the Land Records of East Carroll Parish, Louisiana.

46. Ogden Russell and his wife Kathleen P. Russell are adult non-residents of the State of Mississippi, domiciled in Arkansas, whose post office address and street address is Route 1, Box 348, Marshall, Arkansas 72650.

47. Federal Deposit Insurance Corporation is a federal body corporate created by virtue of 12 U.S.C. §1811 et seq. It may be served with process by serving Donald J. Lubitz, its attorney-in-fact and agent designated for service of process, whose street address is 2506 Lakeland Drive, P. O. Box 55951, Jackson, Mississippi 39216. Federal Deposit Insurance Corporation is the holder of the assets of Bank of Dixie by virtue of an Order of the Sixth Judicial District Court, Parish of East Carroll, Louisiana in Cause No. 14,764, dated January 10, 1986, wherein Bank of Dixie was declared insolvent and the Federal Deposit Insurance Corporation was appointed as receiver and the assets of said Bank were ordered transferred to the Federal Deposit Insurance Corporation in its corporate capacity. Bank of Dixie was the mortgagee by virtue of that certain mortgage granted to it by Genevieve Shorter, Bettye Shorter Prince, Edward Leo Shorter and Fred Rogers Shorter on July 18, 1980 and recorded in the Land Records of East Carroll Parish, Louisiana in Book 132 at Page 451.

48. The unknown heirs at law or devisees of Sam Ernest Shorter, whose names, post office addresses, street addresses and whereabouts are unknown to Plaintiffs after diligent search and inquiry having been made.

49. The unknown heirs at law or devisees of Sam Earl Shorter, whose names, post office addresses, street addresses and whereabouts are unknown to Plaintiffs after diligent search and inquiry having been made.

50. The unknown heirs at law or devisees of Sam Shorter, Jr., whose names, post office addresses, street addresses and whereabouts are unknown to Plaintiffs after diligent search and inquiry having been made.

51. The unknown heirs at law or devisees of Ella N.

Bell, whose names, post office addresses, street addresses and whereabouts are unknown to Plaintiffs after diligent search and inquiry having been made.

52. Plaintiffs are the owners in fee simple of a certain tract of land lying in Issaquena County, Mississippi, more particularly described as follows, to-wit:

> That certain island in the Mississippi River known as Island No. 94, and also known as Stack Island, being sometimes also called Section 27 of Township 11 North, Range 9 West, Issaquena County, Mississippi, being the same island, with accretions which have been added thereto, which was conveyed by the United States of America to Stephen B. Blackwell by patent dated December 29, 1888 and recorded in Book S at Page 444 of the Land Deed Records of Issaquena County, Mississippi. The West boundary of the said lands which is also the East boundary of the lands in the State of Louisiana owned by the Defendants herein, is described as follows:
>
> WHEREAS, the legal description of the West bounds of Stack Island, Mississippi by geodetic positions of the vertexas, numbered Point 1 through Point 21 on Exhibit "A" is described as follows:
>
> Beginning at Pt. 1 at North Latitude 32° 49′ 25″ and West Longitude 91° 09′ 27″, said Pt. 1 being at the foot of the West bounds of Baleshed Towhead, Mississippi and the head of the West bounds of Stack Island, Mississippi, which was fixed along the thalweg of the abandoned Mississippi River Channel in about 1954, thence Southward with the fixed thalweg (marking the Mississippi – Louisiana boundary) in the abandoned sector of Lake Providence Bend channel at Pt. 2, Latitude 32° 49′ and Longitude 91° 09′ 34″; thence to Pt. 3, Latitude 32° 48′ 47″ and Longitude 91° 09′ 37″; thence to Pt. 4, Latitude 32° 48′ 30″ and Longitude 91° 09′ 39″; thence

to Pt. 5, Latitude 32° 48′ and Longitude 91° 09′ 47″; thence to Pt. 6, Latitude 32° 47′ 18″ and Longitude 91° 09′ 51″; thence to Pt. 7, Latitude 32° 47′ 6″ and Longitude 91° 09′ 54″; thence to Pt. 8, Latitude 32° 47′ and Longitude 91° 09′ 59″; thence to Pt. 9, Latitude 32° 46′ 50″ and Longitude 91° 10′ 7″; thence to Pt. 10, Latitude 32° 46′ 35″ and Longitude 91° 10′ 14″; thence to Pt. 11, Latitude 32⅓1 46′ 20″ and Longitude 91° 10′ 16″; thence to Pt. 12, Latitude 32° 46′ and Longitude 91° 10′ 18″; thence to Pt. 13, Latitude 32° 45′ 45″ and Longitude 91° 10′ 20″; thence to Pt. 14, Latitude 32° 45′ 30″ and Longitude 91° 10′ 18″; thence to Pt. 15, Latitude 32° 45′ 15″ and Longitude 91° 10′ 12″; thence to Pt. 16, Latitude 32° 45′ and Longitude 91° 10′ 01″; thence to Pt. 17, Latitude 32° 44′ 45″ and Longitude 91° 09′ 49″; thence to Pt. 18, Latitude 32° 44′ 30″ and Longitude 91° 09′ 38″; thence to Pt. 19, Latitude 32° 44′ 23″ and Longitude 91° 09′ 30″; thence to Pt. 20, Latitude 32° 44′ 15″ and Longitude 91° 09′ 18″; thence to Pt. 21, Latitude 32° 44′ 07″ and Longitude 91° 09′; thence to Pt. 22, Latitude 32° 44′ and Longitude 91° 08′ 44″; said Pt. 21 marks 1975 downstream bounds of Stack Island fixed thalweg (Fixed Interstate Mississippi – Louisiana boundary) and the beginning of the 1975 live thalweg (Live Interstate, Mississippi – Louisiana boundary).

53. The boundary line as set forth above is shown by plat attached hereto as Exhibit "A" and made a part hereof and incorporated herein by this reference.

54. Plaintiffs deraign their title to the above described land as follows:

(a) On December 29, 1888, the United States of America patented said lands to Stephen B. Blackwell by patent recorded in Book S at Page 444 of the Land Records

of Issaquena County, Mississippi. (Hereafter reference to Deed Books will always refer to book records or other records in Issaquena County, Mississippi, unless otherwise specified.)

(b) On April 2, 1917, by deed recorded in Book GG at Page 101, Albert Dreyfus conveyed the aforesaid lands to Stephen B. Blackwell.

(c) On the 15th day of August, 1921, by deed recorded in Book HH at Page 386, Stephen B. Blackwell and his wife, Fannie Blackwell, executed a Timber Deed to Houston Brothers, a co-partnership, then composed of George T. Houston, Philip D. Houston and Horace K. Houston, the deed being recorded in Deed Book HH at Page 386 and conveying all merchantable cottonwood and willow timber on the above lands with a period of 12 years within which to cut and remove the same.

(d) The aforesaid lands sold to the State of Mississippi on the 6th day of April 1931 for 1930 and valorem taxes and said sale not having been redeemed, title matured in the State of Mississippi.

(e) On the 3rd day of August, 1931, by deed recorded in Book LL at Page 514, Stephen B. Blackwell and his second wife, Carrie Blackwell, conveyed to the aforesaid Houston Brothers all of the timber on the aforesaid lands with a period of 12 years from August 15, 1933 in which to cut and remove the same.

(f) On January 25, 1932, Stephen B. Blackwell and his wife, Carrie Blackwell, executed to R. L. Dent, Jr., as Trustee for the use and benefit of the aforesaid Houston Brothers, a co-partnership, a deed of trust recorded in

Book P at Page 537, conveying all of the aforesaid lands to secure the payment of a promissory note described therein.

(g) Fannie Blackwell died and Stephen B. Blackwell married Carrie Blackwell. Thereafter, Stephen B. Blackwell died intestate, a resident of Issaquena County, Mississippi on the 1st day of February, 1933, leaving as his sole heirs at law his widow, Carrie Blackwell and the following children: Vashti Blackwell, Normal Blackwell and Solomon Blackwell.

(h) On June 1, 1934, by patent recorded in Book NN, at Page 301, the State of Mississippi patented said lands to Carrie Blackwell. The said Carrie Blackwell took title in trust for herself and her co-tenants, Vashti Blackwell, Normal Blackwell and Solomon Blackwell.

(i) On the 8th day of October, 1934, by Trustee's Deed recorded in Book NN at Page 301, R. L. Dent, Jr. as Trustee under the aforesaid deed of trust, foreclosed the same and conveyed the above lands to George T. Houston, Philip D. Houston and Horace K. Houston, co-partners, doing business as Houston Brothers.

(j) On the 22nd day of December, 1936, by deed recorded in Book OO at Page 37, George T. Houston, Philip D. Houston and Horace K. Houston conveyed said lands to Houston Brothers, Inc., a Mississippi corporation.

(k) By deed dated December 23, 1936, recorded in Book OO, at Page 38, Houston Brothers, Inc. conveyed said lands to George T. Houston.

(l) On November 8, 1937, by instrument recorded in Book OO at Page 220, R. L. Dent, Jr., Trustee, conveyed the aforesaid lands to George T. Houston.

(m) On the 10th day of December, 1937, Carrie Black-

well, Vashti Blackwell, Normal Blackwell and Solomon Blackwell, being all of the heirs at law of Stephen B. Blackwell, deceased, filed a suit in the Chancery Court of Issaquena County, Mississippi, Numbered 707 on the docket thereof, naming as Defendants George T. Houston, Philip D. Houston and Horace K. Houston, a co-partnership, doing business as Houston Brothers, George T. Houston, Philip D. Houston and Horace K. Houston, Individually, and Houston Brothers, Incorporated, R. L. Dent, Jr., Trustee, and the National Box Company, a corporation of Chicago (the said National Box Company having at that time been the owner of a Timber Deed on the above described lands executed by George T. Houston), in which suit the above named Complainants sought to set aside the foreclosure of deed of trust by R. L. Dent, Jr., shown as Item (i), and the subsequent deed from George T. Houston, et al, to Houston Brothers, Inc. shown as Item (j) and the subsequent deed executed by Houston Brothers, Inc. to George T. Houston, shown as Item (k) above. A Final Decree was entered in said suit dismissing the Bill of Complaint and adjudicating the validity of the foregoing instruments and adjudicating title to said land as being vested in George T. Houston.

(n) On January 6, 1938, by deed recorded in Book OO at Page 42, Solomon D. Blackwell conveyed to E. T. Windham, his interest in the above described lands.

(o) On January 27, 1938, by deed recorded in Book OO at Page 243, E. T. Windham, Carrie Blackwell, Normal Blackwell and Vashti Blackwell conveyed to George T. Houston all of the above described lands.

(p) The said George T. Houston died testate on the 9th day of June, 1941, and his Last Will and Testament was

admitted to probate in Warren County, Mississippi and a certified copy of said Will appears in Will Book D at Page 9 therein. By the terms of said Last Will and Testament, the said George T. Houston set up a charge on his Estate to provide for the payment to his widow, Cora M. Houston, of the sum of $500.00 a month during her lifetime, and on the death of the said Cora M. Houston, this payment was to cease. Subject to the life interest, the remainder vested absolutely in his sons, Horace K. Houston and Philip D. Houston.

(q) On October 16, 1946, Book ZZ at Page 14, the State of Mississippi disclaimed any interest in the aforesaid lands.

(r) The aforesaid Cora M. Houston having died, on the 15th day of May, 1953, by deed recorded in Book AD at Page 284, Horace K. Houston and Elizabeth H. Houston, his wife, conveyed to George T. Houston (being the same person as George T. Houston, III) their one-half interest in the above described lands.

(s) By deed dated March 13, 1954, and recorded in Book AD at Page 285, Philip D. Houston and his wife, Ruth Houston, conveyed to George T. Houston (being the same person as George T. Houston, III) and Ruth H. Houston (now Ruth Houston Baker) their one-half interest in the above described lands.

(t) By Final Decree of the Chancery Court of Issaquena County, Mississippi in Cause No. 1490 on the docket thereof, dated May 7, 1968, George T. Houston, III and Ruth H. Jarvis (also being the same person as Ruth Houston Baker) were adjudged to be the owners in fee simple of the aforesaid lands, with the said George T. Houston, III owning an

undivided three-fourths (¾) interest and Ruth H. Jarvis (being the same person as Ruth Houston Baker) were adjudged to be the owners in fee simple of the aforesaid lands, with the said George T. Houston, III owning an undivided three-fourths (¾) interest and Ruth H. Jarvis (being the same person as Ruth Houston Baker) owning an undivided one-fourth (¼) interest.

(u) On February 14, 1978, by deed recorded in Book AN at Page 194, George T. Houston, III conveyed to Ruth Houston Jarvis Baker, his interest in the above described lands that lay South of the North line extended Westward of that certain tract of land known as "Shipland", with the said George T. Houston, III reserving unto himself an individed one-half (½) interest in the oil, gas and other minerals in, on and under the said lands.

(v) On August 3, 1979, by Final Judgment executed by Hon. Harold Cox, United States District Court Judge for the Southern District of Mississippi, in Civil Action No. 73W-38(C), styled "George T. Houston, III and Ruth H. Jarvis Baker vs. United States Gypsum Company", the plaintiffs, George T. Houston, III and Ruth Houston Baker were adjudged to be the owners in fee simple in accordance with their respective interests, of that part of Stack Island claimed by U. S. Gypsum Company, and all claims of U. S. Gypsum Company were cancelled and removed as clouds upon the title of George T. Houston, III and Ruth Houston Jarvis Baker.

(w) The said George T. Houston, III died testate on the 19th day of September, 1985, with a fixed place of residence in Warren County, Mississippi. His Last Will and Testament was admitted to Probate in Warren County,

Mississippi, in Probate No. 19850 on the docket of the Chancery Court of Warren County, Mississippi, and Plaintiffs Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr. were appointed the Co-Executors of his Estate. The said Last Will and Testament devised the interest of George T. Houston in the said property one-fourth (¼) to the trustee of the Julia Donelson Houston marital trust and three-fourths (¾) to the trustee of the George T. Houston Estate Trust. The said Last Will and Testament appointed Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr. as Trustees of all the Trusts established under the said Will.

55. Plaintiffs allege that the said Stack Island, Mississippi, was subject to the divided flows of the Mississippi River and to the natural erosion and accretion processes of this dynamic alluvial river, and was gradually, progressively and imperceptibly enlarged southward and westward until it reached its present location. Further, from the time of its formation, the Island and its accretions have been bounded on the West by the Mississippi River channel thalweg-Interstate boundary (Mississippi-Louisiana), and bounded on the East by the chute channel, which has a bed that lies entirely within Mississippi.

56. Plaintiffs also allege that after about 1908, the river gradually enlarged the bounding chute channel on the East. Further, in about the year 1913, the enlarging Mississippi chute channel was adopted for navigation.

57. Plaintiffs allege that after about the year 1925, the bounding Mississippi chute channel continued to enlarge and flows increased therein with corresponding lessening of flows in the Mississippi-Louisiana bounding channel on the

West. Further, by about 1934, divided flow conditions were favorable for the formation of accretions to the foot of Stack Island and for the river to gradually and finally abandon the old Mississippi-Louisiana channel West of Stack Island. By the year 1954, this old abandoned channel had become attenuated and filled by alluvium (silt and sand). Likewise, by the year 1962, the old channel along Hagaman Revetment in Lake Providence Bend became attenuated and filled by alluvium.

58. Plaintiffs also allege that the enlargement of the former East chute channel of the Mississippi River and the corresponding abandonment of the West bounding channel was avulsive in nature and did not operate to change the ownership of the described lands but, by reason of the said avulsive action, the Mississippi-Louisiana state boundary became firmly and finally fixed along the locus of the middle of the former main navigation channel, sometimes called the thalweg, which former channel is identical with the West boundary of the lands described and known as Stack Island as described in Paragraph 48 above.

59. Plaintiffs would show that they and their predecessors in title have for more than 90 years next preceding the filing of this suit been in the exclusive, uninterrupted, hostile, open and notorious possession of Stack Island and accretions thereto claiming to own them as against the world. The acts of possession exercised over said land by Plaintiffs and their predecessors in title, among others, have consisted of the payment of taxes on said land, the cutting of timber therefrom, the posting of said land against trespassers, the leasing of said land for grazing purposes, the leasing of said land for hunting purposes, and the grant-

ing of oil, gas and mineral leases and sand and gravel leases thereon, and the cultivation thereof by Stephen Blackwell and the occupancy thereof as his home during his lifetime. The possession of Plaintiffs and their claim of ownership to said Island formation known as Stack Island has been well known and recognized in the community, both in Mississippi and in Louisiana, and said possession and claim of ownership had been unchallenged until the latter 1960's, at which time an assertion was made that a portion of the western part of said Stack Island belonged to certain parties who owned lands in Louisiana to the West of the West boundary of Stack Island as described above. As noted in Paragraph 54(t) above, Plaintiffs brought an action in the Chancery Court of Issaquena County, Mississippi to confirm and quiet their title to the aforesaid lands, naming as defendants the then owners of the adjoining Louisiana lands: Ruth M. Thomas, F. H. Schneider, C. D. Purdy, J. C. Purdy, Mrs. Edith P. Houston, Owen S. Brown, Mrs. Ella N. Bell, Joe Dorris White, Albert Surles, Mary S. Nelson, Genevieve B. Shorter, Polly Shorter Wright, Vail M. Delony, Sam Thomas Batton, Sam L. House, Jr., Gladstone Corp., Annie R. Gilfoil, A. J. Wyly, Jr., James Grady Wyly, Zelda Lowrance, Helen C. Lowrance, Sara Regenold Schneider, Sarah Ann Schneider Mott, Frederick Hall Schneider, III, Gay Schneider, Nanette Schneider, the Unknown Heirs at Law or Devisees of F. H. Schneider, Deceased, the Unknown Heirs at Law or Devisees of A. P. Surles, the Unknown Heirs at Law or Devisees of Sam S. Shorter, the Unknown Heirs at Law or Devisees of Vail M. Delony. The said action was lawfully brought against the said defendants and said Decree is res judicata against them. A certified copy of said

Decree is attached hereto as Exhibit "B" and made a part hereof as if fully copied herein.

60. Recently, some of the said defendants and/or their successors who own lands in Louisiana, have made assertions of ownership of portions of the lands of Plaintiffs as described above. Plaintiffs have made diligent search and inquiry to ascertain the names of all of the claimants to the lands west of Plaintiffs' west line, and the said defendants who appear to be making some claim of title to the Plaintiffs' land as aforesaid. Said acts on the part of the Defendants create a cloud upon the title of Plaintiffs which Plaintiffs are entitled to have removed.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray:

1. That upon a final hearing hereof, judgment be entered in this cause adjudicating that Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr. as Trustees of the Julia Donelson Houston Marital Trust are the fee simple owners of an undivided three-sixteenths (3/16) interest, and that Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr. as Trustees of the George T. Houston Estate Trust are the fee simple owners of an undivided nine-sixteenths (9/16) interest, and that Ruth Houston Baker is the fee simple owner of an undivided one-fourth (1/4) interest in and into the property described above in Paragraph 52 lying North of the North line extended westward of that certain tract of land known as "Shipland"; and that Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr. as Trustees of the Julia Donelson Houston Marital Trust are the fee simple owners of an undivided one-eight (1/8)

interest and that Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr. are Trustees of the George T. Houston Estate Trust are the fee simple owners of an undivided three-eights (3/8) interest each in and to the oil, gas and other mineral lying in, on and under the land described above in Paragraph 52, lying South of the North line extended westward of the certain tract of land known as "Shipland"; and that the said Ruth Houston Baker is the fee simple owner of the lands described above in Paragraph 52 lying South of the North line extended westward of that certain tract of land known as "Shipland" subject to the ownership of an undivided one-half (1/2) interest in and to the oil, gas and other mineral lying in, on and under the said property as set forth above. Further, that the judgment of this Court finds that none of the Defendants have any right, title or interest in said lands and that this Court remove and cancel all clouds heretofore existing on the title of Plaintiffs in and to said property as against all claims of the Defendants.

2. If Plaintiffs have prayed for improper relief, that the Plaintiffs be granted such other and further relief to which they may be entitled in the premises.

JULIA DONELSON HOUSTON, RUTH HOUSTON BAKER, HINES H. BAKER, JR., CO-EXECUTORS AND CO-TRUSTEES OF THE ESTATE OF GEORGE T. HOUSTON, a/k/a GEORGE T. HOUSTON, III,

DECEASED AND RUTH
HOUSTON BAKER
INDIVIDUALLY

BY: Robert R. Bailess

ROBERT R. BAILESS
GEOFFREY C. MORGAN

THEIR ATTORNEYS

OF COUNSEL:

WHEELESS, BEANLAND, SHAPPLEY
& BAILESS
P. O. BOX 991
VICKSBURG, MS 39180
601-636-8451

A TRUE COPY, I HEREBY CERTIFY.
Clarence A. Pierce, CLERK
By: Ann Allen
Deputy Clerk

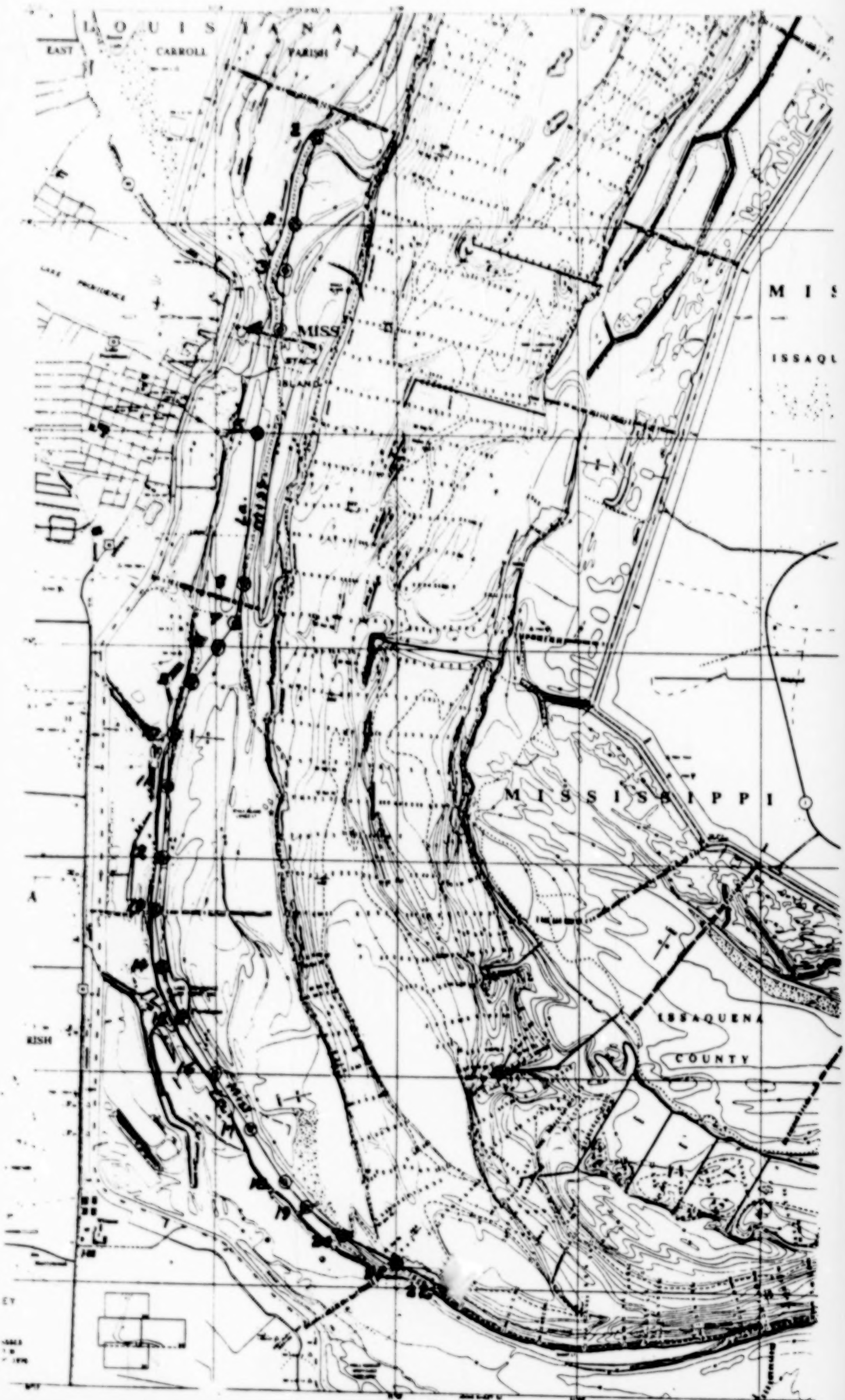
LOUISIANA
EAST CARROLL PARISH
MISS
MISSISSIPPI
ISSAQUENA COUNTY

EXHIBIT A

No. 1490

In The Chancery Court of Issaquena County, Mississippi

GEORGE T. HOUSTON, III AND RUTH H. JARVIS, DOING BUSINESS AS FORRESTAIRE ESTATES,
COMPLAINANTS,

v.

RUTH M. THOMAS, F. H. SCHNEIDER, C. D. PURDY, J. C. PURDY, MRS. EDITH P. HOUSTON, GWEN S. BROWN, MRS. ELLA N. BELL, JOE DORRIS WHITE, ALBERT SURLES, MARY S. NELSON, GENIEVE B. SHORTER, POLLY SHORTER WRIGHT, VAIL M. DELONY, SAM THOMAS BATTON, SAM L. HOUSE, JR., GLADSTONE CORP., ANNIE R. GILFOIL, A. J. WYLY, JR., JAMES GRADY WYLY, ZELDA LOWRANCE, HELEN C. LOWRANCE, SARS REGENOLD SCHNEIDER, SARAH ANN SCHNEIDER MOTT, FREDERICK HALL SCHNEIDER, III, GAY SCHNEIDER, NANETTE SCHNEIDER, THE UNKNOWN HEIRS-AT-LAW OR DEVISEES OF F. H. SCHNEIDER, DECEASED, THE UNKNOWN HEIRS-AT-LAW OR DEVISEES OF A. P. SURLES, THE UNKNOWN HEIRS-AT-LAW OR DEVISEES OF VAIL M. DELONY,
DEFENDANTS.

FINAL DECREE

THIS CAUSE coming on for final hearing on Bill of Complaint and Decree Pro Confesso; and it appearing to the satisfaction of the Court that the Complainant is entitled to the relief prayed for.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That Complainants are the owners in fee simple of a certain tract of land lying in Issaquena County, Mississippi, the said George T. Houston, III owning a ¾ths interest therein and the said Ruth H. Thomas owning a ¼th interest therein, more particularly described as follows, to-wit:

> That certain Island in the Mississippi River known as Island No. 94, and also known as Stack Island, being sometimes also called Section 27 of Township 11 North, Range 9 West; Issaquena County, Mississippi, being the same Island, with accretions which have been added thereto, which was conveyed by the United States of America to Stephen B. Blackwell by patent dated December 29, 1888 and recorded in Book S at page 444 of the Land Deed Records of Issaquena County, Mississippi. The west boundary of said lands which is also the east boundary of the lands in the State of Louisiana owned by the Defendants herein is described as follows:
>
> Commence at the southwest corner of fractional Section 6, Township 21 North, Range 13 East, East Carroll Parish, Louisiana, and run thence East to a point at latitude 32° 49′ 49″ and longitude 91° 08′ 45″, said point of beginning lying approximately 6750 feet east of the southwest corner of fractional Section 6 aforesaid.
>
> From said point of beginning run thence westward to latitude 32° 49′ 42″ and longitude 91° 09′; run thence westward to latitude 32° 49′ 36″ and longitude 91° 09′ 15″; thence westward to latitude 32° 49′ 30″ and longitude 91° 09′ 24″; thence southward to latitude 32° 49′ 15″ and longitude 91° 09′ 36″; thence southward to

latitude 32° 49′ and longitude 91° 09′ 44″; thence southward to latitude 32° 48′ 45″ and longitude 91° 09′ 41″; thence southward to latitude 32° 48′ 38″ and longitude 91° 09′ 38″; thence southward to latitude 32° 48′ 30″ and longitude 91° 09′ 39″; thence southward to latitude 32° 48′ and longitude 91° 09′ 47″; thence southward to latitude 32° 47′ 30″ and longitude 91° 09′ 53″; thence southward to latitude 32° 47′ 22″ and longitude 91° 09′ 56″; thence southward to latitude 32° 47′ and longitude 91° 10′ 04″; thence southward to latitude 32° 46′ 45″ and longitude 91° 10′ 10″; thence southward to latitude 32° 46′ 30″ and longitude 91° 10′ 14″; thence southward to latitude 32° 46′ 15″ and longitude 91° 10′ 16″; thence southward to latitude 32° 46′ and longitude 91° 10′ 18″; thence southward to latitude 32° 45′ 45″ and longitude 91° 10′ 19″; thence southward to latitude 32° 45′ 30″ and longitude 91° 10′ 18″; thence southward to latitude 32° 45′ 15″ and longitude 91° 10′ 12″; thence southward to latitude 32° 44′ 59″ and longitude 91° 10′; thence southward to latitude 32° 44′ 45″ and longitude 91° 09′ 49″; thence southward to latitude 32° 44′ 30″ and longitude 91° 09′ 37″; thence southward to latitude 32° 44′ 15″ and longitude 91° 09′ 17″; which marks the southern terminus of the lands owned by Complainants as aforesaid, said southern terminus lying north 25° 31′ West 3280 feet from the southeast corner of Fractional Section 65, Township 20 North, Range 13 East, East Carroll Parish, Louisiana aforesaid.

2. None of the Defendants have any right, title or interest in said lands and any claims thereto heretofore asserted by them are hereby cancelled.

3. That complainants are assessed with all costs incurred herein.

ORDERED, ADJUDGED AND DECREED this the 7th day of May, 1968.

CHANCELLOR

STATE OF MISSISSIPPI
ISSAQUENA COUNTY

I, Mary T. Vandevender, Clerk of the Chancery Court of the above named County and State, do certify that the foregoing instrument is a true and correct copy of the original as appears in Chancery Book No. 8, Page 72 of the records of my office.

Witness my signature and seal of office this the 9th day of July, 1986.

MARY T. VANDEVENDER,
Chancery Clerk

D. C.

EXHIBIT B

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

MOTION FOR LEAVE TO AMEND COMPLAINT

COME NOW the Plaintiffs, by and through their attorneys of record, and file this their Motion for Leave to Amend Complaint and in support thereof would show as follows:

1. That subsequent to the filing of the Complaint to Remove Cloud filed in this cause, and after having attempted to serve process on Ruth M. Thomas, Plaintiffs discovered that the said Ruth M. Thomas died intestate in Louisiana on or about November 2, 1985. That the said Ruth M. Thomas, deceased, left surviving her as her sole and only heirs at law three sons, to-wit: Nathaniel W. Thomas, Frank M. Thomas and Collins S. Thomas, all of whom are adult resident citizens of the State of Louisiana. That since Ruth M. Thomas is deceased, her sole and only heirs at law, Nathaniel W. Thomas, Frank M. Thomas and Collins S. Thomas are necessary and indispensable parties to this suit. Plaintiffs further state that complete relief cannot be accorded in the absence of Na-

thaniel W. Thomas, Frank M. Thomas and Collins S. Thomas being made Defendants to this suit.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request this Court to enter its Order allowing Plaintiffs leave to amend the Complaint to Remove Cloud previously filed by them in order to add Nathaniel W. Thomas, Frank M. Thomas and Collins S. Thomas as necessary Defendants in this cause and in so doing amend Paragraph 4 of the Complaint to show that Ruth M. Thomas is deceased and that they are the sole and only heirs at law of the said Ruth M. Thomas.

JULIA DONELSON HOUSTON, RUTH HOUSTON BAKER, HINES H. BAKER, JR., CO-EXECUTORS AND CO-TRUSTEES OF THE ESTATE OF GEORGE T. HOUSTON, a/k/a GEORGE T. HOUSTON, III, DECEASED AND RUTH HOUSTON BAKER, INDIVIDUALLY

BY: Robert R. Bailess

ROBERT R. BAILESS
GEOFFREY C. MORGAN

THEIR ATTORNEYS

WHEELESS, BEANLAND, SHAPPLEY
& BAILESS
P. O. BOX 991
VICKSBURG, MS 39180
601-636-8451

CERTIFICATE OF SERVICE

I, Robert R. Bailess, one of the attorneys for Plaintiffs; do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Motion for Leave to Amend Complaint to:

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Attorney at Law
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Lake Providence, LA

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Tallulah, LA 71282

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Tallulah, Louisiana 71282

Sarah Ann Schneider Botkin
1103 Bayou Drive
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Sara Ann Schneider Mott
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Terrell, NC 28692

Frederick Hall Schneider, III
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Mildred A. House
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Lake Providence, Louisiana 71254

Sam Thomas Batton
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Lake Providence, Louisiana 71254

Audrey H. Batton
412 Schneider Lane
Lake Providence, Louisiana 71254

Gladstone Corporation
Virginia Wyly, agent for service of process
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Baton Rouge, Louisiana 70808

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Annie Ethel Wyly
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Opa-Locka, Florida 33054

William Norris Wyly
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Lake Providence, Louisiana 71254

Bonnie G. Wyly
Rt. 1, Box 35
Lake Providence, Louisiana 71254

Hollybrook Land Company, Incorporated
D. M. Amacker, agent for service of process
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Lake Providence, Louisiana 71254

Ed M. Lowrance, Trustee
2902 Midland
Memphis, Tennessee 38111

Helen C. Lowrance
232 S. Highland St.
Memphis, Tennessee 38111

Ogden Russell
Route 1, Box 348
Marshall, Arkansas 72650

Kathleen P. Russell
Rt. 1, Box 348
Marshall, Arkansas 72650

Federal Deposit Insurance Corporation
c/o Hon. Judy Herrin
Regional Attorney
245 Peachtreet Center Avenue, Suite 1400
Atlanta, Georgia 30303

Nathaniel W. Thomas
119 Shady Ave.
Pineville, Louisiana

Frank M. Thomas
1307 Mesa Street
Ruston, Louisiana 71279

Collins S. Thomas
403 North Lincoln Street
Tallulah, Louisiana 71282

THIS the 17 day of April, 1987.

Robert R. Bailess

ROBERT R. BAILESS

EXHIBIT C

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

---

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

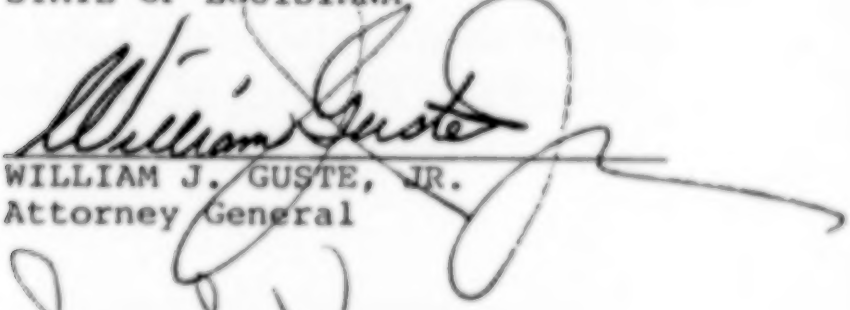
MOTION FOR INTERVENTION OF STATE OF LOUISIANA AND LAKE PROVIDENCE PORT COMMISSION

NOW INTO COURT comes the State of Louisiana and the Lake Providence Port Commission, ex rel. William J. Guste, Jr., Attorney General of the State of Louisiana, and other undersigned counsel, who move for leave of court to intervene in this action as a matter of right under the Constitution of the United States; acts of the United States Congress; and under 28 USC 1331, 2201 and 2202, as well as other causes of action not asserted by the original plaintiffs or defendants, as set forth in the pro-

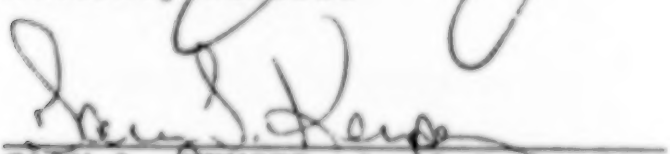
posed complaint; and that this court should exercise jurisdiction over the claims of intervenors accordingly.

Respectfully submitted,

STATE OF LOUISIANA



WILLIAM J. GUSTE, JR.
Attorney General



GARY L. KEYSER, Lead Counsel
Assistant Attorney General
7434 Perkins Road, Suite C
Baton Rouge, Louisiana 70808
(504) 922-0187

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR INTERVENTION OF STATE OF LOUISIANA AND LAKE PROVIDENCE PORT COMMISSION

The original complaint filed herein is styled as a Complaint To Remove Cloud and identifies numerous plaintiffs as the owners in fee simple of a certain tract of land purportedly lying in Mississippi, described with particularlity in paragraph 52 thereof.

Complainants recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the Complaint.

Thereafter, in paragraph 55 and following paragraphs, complainants allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

Intervenors now show that their rights arise under the Constitution of the United States and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found in Chapter 50 of the United States Statutes at Large, Volume 2, Page 701; that the real question in dispute between the plaintiffs and the defendants is the location of the boundary line between the State of Louisiana and the State of Mississippi for the pertinent periods set forth in plaintiffs' complaint; that the determination of such boundary involves an interpretation of such acts of Congress setting forth the boundaries and determination of the boundaries between said two states; that this controversy further involves the equal footing doctrine applicable to the states of the United States; it would further appear to your petitioners, and it is so alleged, that the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, is also involved in this controversy, including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which can only be made pursuant to the Constitution of the United States and federal law involving a question of interpretation and application of federal law and jurisdiction. The above described action is a civil action in which this Court has original jurisdiction in respect to the federal questions involved under the provisions of 28 USC 1331, 2201 and 2202.

This controversy also involves a dispute between citizens of different states having separate and independent claims as between citizens of different states in that plaintiffs are citizens of the State of Mississippi; adult non-

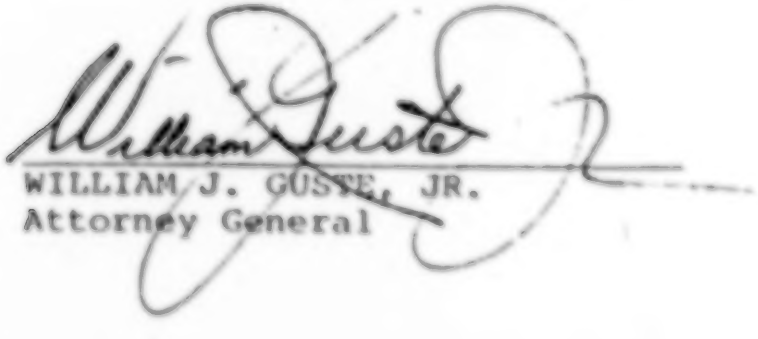
residents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; unknown heirs at law; as against defendants alleged to be the owners of land in Louisiana who have made assertions of ownership to portions of the lands of plaintiffs, as set forth in paragraph 60 of the Complaint, whereby said acts on the part of defendants are alleged to have created a cloud upon the title of plaintiffs, which plaintiffs are allegedly entitled to have removed.

It is now shown that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission, and said intervenors are entitled to a declaration of their rights and other legal relations as against plaintiffs, pursuant to 28 USC 2201, et seq, and other applicable law, as cited hereinabove and as may be found by the court to be applicable to this cause.

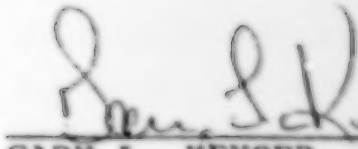
Accordingly, the State of Louisiana and the Lake Providence Port Commission moves this Honorable Court for leave to file its Petition for Intervention based upon its rights ennumerated herein under the Constitution of the United States; acts of Congress; the cited statutes of the United States and Rule 24 of the Federal Rules of Civil Procedure.

Respectfully submitted,

STATE OF LOUISIANA



WILLIAM J. GUSTE, JR.
Attorney General



GARY L. KEYSER, Lead Counsel
Assistant Attorney General
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Baton Rouge, Louisiana 70808
(504) 922-0187

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western District

---

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

ORDER

The foregoing Motion for Intervention considered:

IT IS ORDERED that the motion of the State of Louisiana and the Lake Providence Port Commission, ex rel. William J. Guste, Jr., Attorney General, of the State of Louisiana for leave to intervene in these proceedings is hereby granted.

Rendered and signed this 30th day of June, 1987 at Jackson, Mississippi.

JOHN R. COUNTISS, MAGISTRATE
United States District Court
SOUTHERN DISTRICT OF
MISSISSIPPI

EXHIBIT D

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

INTERVENTION

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and files this Intervention, alleging the following:

NATURE OF ACTION

This is a civil action brought by plaintiffs under 28 USC 1332, alleging that plaintiffs are the owners in fee simple of a certain tract of land lying in Issaquena County, Mississippi, described with greater particularity in paragraph 52 of the Complaint to Remove Cloud. Plaintiffs allegedly derived their title to the said lands according to a chain of title described in paragraphs 54 et seq. of the original Complaint.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to 28 USC 1331, 1332, 2201 and 2202; as well as under the Constitution of the United States and an Act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found in Chapter 50 of the United States Statutes At Large, Volume 2, page 701; and, further, under the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80.

2. Venue is proper before this district court pursuant to 42 USC 1391(f)(1), inasmuch as a substantial part of the property that is the subject of the action is or may be situated within this judicial district.

DEFENDANTS

3. Defendants, as alleged by plaintiffs, are adult nonresidents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; unknown heirs at law; and residents and domiciliaries of the State of Louisiana.

4. Intervenors are the State of Louisiana and the Lake Providence Port Commission, an agency or instrumentality of the State of Louisiana under 28 USC 1603.

REFERENCE STATEMENT

5. The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint to Remove Cloud. The

plaintiffs are citizens of the State of Mississippi; adult non-residents of the State of Mississippi; domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law. The defendants are numerous and are named in paragraph 4-51, inclusive, it being alleged that none of them are residents of the State of Mississippi. However, it is noted that the Federal Deposit Insurance Corporation is named as both a plaintiff in the introductory statement and as a defendant in paragraph 47.

6. Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

7. In paragraph 55 and following paragraphs, plaintiffs allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward. Natural processes have caused Stack Island to now be attached to the west bank of the Mississippi River.

8. The real question in dispute between the plaintiffs, defendants and intervenors is the location of the boundary line between the State of Louisiana and the State of Mississippi for all periods of time pertinent to the issues set forth in plaintiffs' complaint. The determination of the boundary involves an interpretation of the acts of Congress setting forth the boundaries and the determination of the boundaries between the two states. This controversy further involves the Equal Footing Doctrine of the states of the United States; and it further appears to your intervenors, and it is so alleged, that the Treaty

of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80, is also involved in this controversy, and including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which determination can only be made pursuant to the Constitution of the United States and federal law involving a question of the interpretation and application of federal law and jurisdiction.

9. This controversy involves a dispute between citizens in different states having separate and independent claims, as well as a dispute between citizens of one state and the sovereign itself of another state, i.e., the State of Louisiana, and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana.

10. Plaintiffs' complaint appears to state a separate and independent claim as to each of the named defendants, with the possible exception of the Federal Deposit Insurance Corporation.

11. The amount in controversy as to each of the said defendants exceeds the sum of $10,000.00, exclusive of interest and costs, with respect to each such separate and independent claim as to each said defendant, including the State of Louisiana and the Lake Providence Port Commission, intervenors.

12. Intervenors show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission, and said intervenors are entitled to a declaration of their rights and other legal relations as against plaintiffs, pursuant to 28 USC 2201, et seq., and other applicable law,

as cited hereinabove and as may be found by the Court to be applicable to this cause.

WHEREFORE, intervenors, the State of Louisiana and Lake Providence Port Commission, respectfully pray:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

(2) That upon a final hearing hereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants and intervenors, and further declaring the rights and other legal relations as between the parties;

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,

STATE OF LOUISIANA

WILLIAM J. GUSTE, JR.
Attorney General

GARY L. KEYSER,
Lead Counsel
Assistant Attorney General
7434 Perkins Road, Suite C
Baton Rouge, Louisiana 70808
(504) 922-0187

Please Serve:

Plaintiffs, through counsel of record:
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Mr. Geoffrey C. Morgan
WHEELESS, BEANLAND SHAPPLEY
& BAILESS
Post Office Box 991
Vicksburg, MS 39180

Defendants, through counsel of record:
Mr. George F. Fox, Jr.
McINTOSH, FOX & LANCASTER
301 Morgan Street
Lake Providence, LA 71254

EXHIBIT E

No. W86-0080(B)

In the United States District Court for the Southern District of Mississippi Western Division

---

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

RESPONSE TO INTERVENTION

COMES NOW Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston a/k/a George T. Houston, III, Deceased; and Ruth Houston Baker, individually, and in response to the intervention filed by the State of Louisiana and the Lake Providence Port Commission would respond, paragraph by paragraph, as follows, to-wit:

1. Plaintiffs admit this Court has jurisdiction over the subject matter of this action under 28 USC §1332. Plaintiffs deny the remaining allegations of Paragraph 1.

2. The allegations of Paragraph 2 are admitted.

3. The allegations of Paragraph 3 are admitted.

4 The allegations of Paragraph 4 are admitted.

5. Plaintiffs admit that they are the owners in fee simple title of a certain tract of land lying in Mississippi described with particularity in Paragraph 52 of the Complaint to Remove Cloud. Plaintiffs further admit that Julia Donelson Houston is an adult resident citizen of Mississippi and that Ruth Houston Jarvis Baker and Hines H. Baker, Jr. are adult resident citizens of Harris County, Texas. Plaintiffs deny that any of them are domiciled in Louisiana, deny that the Federal Deposit Insurance Company is a plaintiff and further deny that any unknown heirs at law are plaintiffs. Plaintiffs deny the remaining allegations of Paragraph 5.

6. The allegations of Paragraph 6 are admitted.

7. Plaintiffs admit that in Paragraph 55 and following paragraphs of the Complaint to Remove Cloud, Plaintiffs set forth certain facts contained therein concerning the subject property. Said Complaint speaking for itself and requires no admission or denial herein. Plaintiffs deny the remaining allegations of Paragraph 7.

8. Plaintiffs admit that one question in dispute between Plaintiffs, Defendants and Intervenors is the location of the boundary line between the State of Louisiana and the State of Mississippi. Plaintiffs deny the remaining allegations of Paragraph 8.

9. Plaintiffs admit that this controversy involves a dispute between citizens in different states having separate and independent claims. Plaintiffs deny the remaining allegations of Paragraph 9.

10. Plaintiffs admit that their complaint states a separate and independent claim as to each of the named

defendants. Plaintiffs deny the remaining allegations of Paragraph 10.

11. Plaintiffs admit that the amount in controversy as to each of the said Defendants exceeds the sum of $10,000.00 exclusive of interest and costs with respect to each such separate and independent claim as to each said defendant. Plaintiffs deny the remaining allegations of Paragraph 11.

12. The allegations of Paragraph 12 are denied.

Plaintiffs admit that this Court should be allowed to determine the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth in the Complaint to Remove Cloud and that upon a final hearing hereof judgment will be entered in this cause adjudicating the lands in question to the proper parties as owners thereof as between Plaintiffs, Defendants and Intervenors, and further declaring the rights and other legal relations as between the parties.

Respectfully submitted,

JULIA DONELSON HOUSTON, RUTH HOUSTON BAKER AND HINES H. BAKER, JR., CO-EXECUTORS AND CO-TRUSTEES OF THE ESTATE OF GEORGE T. HOUSTON, a/k/a GEORGE T. HOUSTON, III,

DECEASED; and RUTH
HOUSTON BAKER,
INDIVIDUALLY

BY: Robert R. Bailess

Robert R. Bailess
Attorney for Plaintiffs

CERTIFICATE

I, Robert R. Bailess, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing to the following attorneys of record:

Mr. Gary L. Keyser
Assistant Attorney General
7434 Perkins Road, Suite C
Baton Rouge, LA 70808

George F. Fox, Jr., Esq.
McIntosh, Fox, & Lancaster
301 Morgan Street
Lake Providence, LA 71254

Archie L. Jefferson, Esq.
820 Second Street
New Orleans, LA 70130

Mr. William F. Naff
312 McLure St.
Tallulah, LA 71282

Hines H. Baker, Jr., Esq.
Suite 3442 Interfirst Plaza
1100 Louisiana St.
Houston, TX 77002-5217

M. E. Ward, Esq.
P. O. Box 789
Vicksburg, MS 39180

THIS 30th day of September, 1987.

Robert R. Bailess

ROBERT R. BAILESS

No. W86-0080(B)

In the United States District Court for the Southern District of Mississippi Western Division

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

SCHEDULING ORDER

Pursuant to Rule 16(b), Federal Rules of Civil Procedure, it is hereby:

ORDERED, that all discovery shall be completed on or before February 15, 1988. (No longer than six months from date issue joined absent extraordinary circumstances.)

ORDERED, that motions for joinder of parties of amendments to the pleadings shall be served on or before November 1, 1987. (No later than one-half of the time proposed for completion of discovery.)

ORDERED, that all the plaintiffs' experts shall be designated on or before November 15, 1987. (No later than ninety (90) days prior to discovery deadline.)

ORDERED, that all defendants' experts shall be designated on or before December 15, 1987. (No later than sixty (60) days prior to discovery deadline.)

ORDERED, that all motions, with the exception of the evidentiary *in limine* motions, shall be served on or before March 15, 1988. (No later than thirty (30) days after the discovery deadline.)

ORDERED, this _____ day of _____ , 1987.

_____

UNITED STATES DISTRICT JUDGE

Robert R. Bailess

ROBERT R. BAILESS,
ATTORNEY
FOR THE HOUSTON
INTERESTS

_____

GARY L. KEYSER
LEAD COUNSEL
ASSISTANT ATTORNEY
GENERAL OF THE STATE
OF LOUISIANA ON BEHALF
OF THE STATE OF
LOUISIANA AND LAKE
PROVIDENCE PORT
COMMISSION

GEORGE F. FOX, JR.
ATTORNEY FOR LISA M.
MILLER, JOHN O. NELSON,
JR., TOM ED NELSON,
HAZEL T. WHITE,
ELIZABETH LOUISE
MILLER DELONY,
ADMINISTRATRIX OF THE
SUCCESSION OF VAIL M.
DELONY, ELIZABETH
DELONY REED, VAIL
DELONY BALDRIDGE, SAM
L. HOUSE, JR. AND
MILDRED A. HOUSE, SAM
THOMAS BATTON AND
AUDREY H. BATTON,
WILLIAM NORRIS WYLY
AND BONNIE G. WYLY,
HOLLYBROOK LAND
COMPANY, INCORPORATED,
JAMES H. GILFOIL, III AND
ANNIE ROSE W. GILFOIL,
BESSIE PRICE TALBERT
PURDY AND EDITH P.
HOUSTON

ARCHIE L. JEFFERSON,
ATTORNEY
FOR WILLIE B. SHORTER,
BETTYE JOE SHORTER
PRINCE, FRED ROGERS
SHORTER, EDWARD LEO
SHORTER, THE UNKNOWN
HEIRS AT LAW OR
DEVISEES OF SAME
ERNEST SHORTER, THE
UNKNOWN HEIRS AT LAW
OR DEVISEES OF SAM EARL
SHORTER AND THE
UNKNOWN HEIRS AT LAW
OR DEVISEES OF SAM
SHORTER, JR.

WILLIAM F. NAFF,
APPEARING PRO SE

EXHIBIT F

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western District

---

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

THIRD-PARTY COMPLAINT

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, Intervenors, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and file this Third-Party Complaint, naming the State of Mississippi as third-party defendant, as follows:

1.

The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint To Remove Cloud.

2.

The plaintiffs claim to be citizens of the State of Mississippi; adult non-residents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law.

3.

The defendants are numerous named individuals residing in the State of Louisiana, as set forth in paragraphs 4-51, inclusive of the complaint.

4.

Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

5.

On information and belief, defendants' title is derived from patents of the United States of America and from the State of Louisiana pursuant to its inherent sovereignty; under the Equal Footing Doctrine; and according to the Treaty of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the determination of boundaries. Accordingly, an interpretation of the said doctrines and treaty as they affect or may affect the boundary between the State of Mississippi and the State of Louisiana must be made pursuant to the

Constitution of the United States and federal law involving the question of the interpretation and application of federal law and jurisdiction.

6.

This controversy involves a dispute between citizens in different states having separate and independent claims; a dispute between citizens of one state and the sovereign itself of another state, i.e., the State of Louisiana and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana; as well as a dispute between two sovereigns, the State of Louisiana and the State of Mississippi, concerning the location of the boundary line between the two states.

7.

A final determination of this controversy will involve not only the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein, but also a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

8.

Third-party plaintiffs show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission; a large and substantial portion of the lands in question are owned by residents of the State of Louisiana; and, accordingly, said parties are entitled to a declaration of

their rights and other legal relations as against plaintiffs and third-party defendant, the State of Mississippi, as set forth hereinabove and as may be found by the Court to be applicable to this cause.

9.

Third-party plaintiffs show that a final determination will also involve the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein and, also, a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

WHEREFORE, third-party plaintiffs, the State of Louisiana and the Lake Providence Port Commission, respectfully pray for judgment against third-party defendant, the State of Mississippi, as follows:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

(2) That upon a final hearing thereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi, and further declaring the rights and other legal relations as between the parties; and

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,

STATE OF LOUISIANA

WILLIAM J. GUSTE, JR.
Attorney General

GARY L. KEYSER, Lead Counsel
Assistant Attorney General
7434 Perkins Road, Suite C
Baton Rouge, Louisiana 70808
(504) 765-2416

Please Serve:

Plaintiffs, through counsel of record:
Mr. Robert R. Bailess
Mr. Geoffrey C. Morgan
WHEELESS, BEANLAND, SHAPPLEY
& BAILESS
Post Office Box 991
Vicksburg, MS 39180

Defendants, through counsel of record:
Mr. George F. Fox, Jr.
McINTOSH, FOX & LANCASTER
301 Morgan Street
Lake Providence, LA 71254

Third-Party Defendant, State of Mississippi through:
Honorable William A. Allain
Governor of Mississippi
Post Office Box 139
Jackson, Mississippi 39205

Honorable Edwin Lloyd Pittman
Attorney General
State of Mississippi
Post Office Box 220
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Archie J. Jefferson, Esq.
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Hines H. Baker, Jr., Esq.
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1100 Louisiana Street
Houston, Texas 77002-5217

M. E. Ward, Esq.
Post Office Box 789
Vicksburg, Mississippi 39180

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

MOTION FOR ORDER TO FILE THIRD-PARTY COMPLAINT

INTERVENORS, the State of Louisiana and the Lake Providence Port Commission, appearing herein as third-party plaintiffs through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, respectfully move this Honorable Court for an Order permitting the filing of a Third-Party Complaint in this matter, naming the State of Mississippi as a third-party defendant, on the following grounds:

(1) That since the filing of the Intervention herein, plaintiffs, through counsel, have filed a response to the Intervention and admit in paragraphs 8, 9 and 12 thereof that one question in dispute between plaintiffs, defendants and intervenors is the location of the boundary line between the State of Louisiana and the State of Mississippi; that there is a controversy involving a dispute between citizens in different states having separate and independent claims; and that a final determination will involve not only the location of a proper boundary line be-

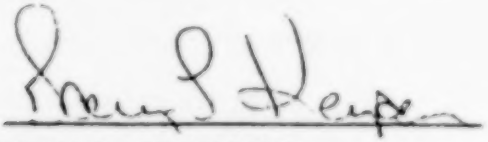
tween the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein, but also a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants and intervenors, and further declaring the rights and other legal relations as between the parties;

(2) It is necessary for the State of Mississippi to be made a party herein in order to assure that all interests are properly represented in the litigation and that a proper boundary line between the State of Louisiana and the State of Mississippi be drawn with the full participation of the State of Mississippi, in addition to the determination of other rights and legal relations as between the states; and

(3) Rule 14 of the Federal Rules of Civil Procedure permit the filing of the Third-Party Complaint at this time.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General

By: 

GARY L. KEYSER
Assistant Attorney General
Louisiana Department of
Justice
Lands and Natural
Resources Division
7434 Perkins Road, Suite C
Baton Rouge, Louisiana 70808
(504) 765-2416

CERTIFICATE

I, Gary L. Keyser, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing to the following attorneys of record:

Robert R. Bailess, Esq.
Wheeless, Beanland, Shappley & Bailess
Post Office Box 991
800 First National Bank Building
Vicksburg, Mississippi 39180

George F. Fox, Jr., Esq.
McIntosh, Fox & Lancaster
301 Morgan Street
Lake Providence, Louisiana 71254

Archie L. Jefferson, Esq.
820 Second Street
New Orleans, Louisiana 70130

Mr. William F. Naff
312 McLure Street
Tallulah, Louisiana 71282

Hines H. Baker, Jr., Esq.
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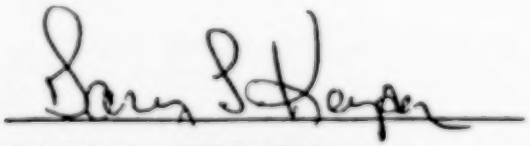
Houston, Texas 77002-5217

M. E. Ward, Esq.
Post Office Box 789
Vicksburg, Mississippi 39180

This 16th Day of November, 1987.



GARY L. KEYSER
Assistant Attorney General

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western District

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

ORDER

IT IS ORDERED that the foregoing Motion for Order to File Third Party Complaint by the State of Louisiana and the Lake Providence Port Commission is hereby GRANTED.

Jackson, Mississippi, this 23rd day of November, 1987.

JOHN R. COUNTISS, Magistrate
United States District Court
Southern District of
Mississippi

EXHIBIT G

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

---

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

ANSWER OF THE STATE OF MISSISSIPPI TO THIRD-PARTY COMPLAINT

COMES NOW the State of Mississippi by and through Mike Moore, Attorney General of the State of Mississippi and in response to the Third-Party Complaint filed herein in the above styled and numbered cause would answer as follows:

FIRST DEFENSE

1. The third-party Defendant admits the allegations contained in paragraph 1.

2. The third-party Defendant admits the allegations contained in paragraph 2.

3. The third-party Defendant admits the allegations contained in paragraph 3.

4. The third-party Defendant admits the allegations contained in paragraph 4.

5. The third-party Defendant denies the allegations in paragraph 5 except that the third-party Defendant admits that an interpretation of applicable doctrines and treaties and determination of the boundary between the State of Mississippi and the State of Louisiana must be made pursuant to the Constitution of the United States and applicable federal law.

6. The third-party Defendant admits the allegations in paragraph 6.

7. The third-party Defendant admits the allegations in paragraph 7.

8. The third-party Defendant admits that paragraph 8 of the Third-Party Complaint states the legal position of the State of Louisiana but denies the material allegations of paragraph 8 of the Third-Party Complaint.

9. The third-party Defendant admits the allegations in paragraph 9.

SECOND DEFENSE

The property which is the subject of this litigation is located in the State of Mississippi pursuant to the Act of Congress approved March 1, 1817, admitting the State of Mississippi to the Union of the United States of America, which Act is found at 3 Stat. 348, Chapter 23; the Equal Footing Doctrine; and the Treaty of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80. This property is, therefore, subject to the exclusive and complete jurisdiction of the State of Mississippi.

WHEREFORE, PREMISES CONSIDERED, the third-party Defendant respectfully prays that this Court will (1) adjudicate and declare that the subject lands are located within the territorial boundaries of the State of Mississippi; (2) adjudicate and declare the proper boundary line between the State of Louisiana and the State of Mississippi according to all applicable law; (3) adjudicate the lands in question to the proper parties as owners thereof, as between Plaintiff and Defendant, Intervenors and third-party Defendant and (4) for such other and further relief as this Court may deem proper, equitable and just.

Respectfully submitted,

STATE OF MISSISSIPPI

MIKE MOORE
ATTORNEY GENERAL

FRANK SPENCER
ASSISTANT ATTORNEY GENERAL

BY: Helen Wetherbee

Helen Wetherbee
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I, Helen Wetherbee, Special Assistant Attorney General of the State of Mississippi, do hereby certify that I have this day forwarded by United States Postal Service, postage prepaid, one true and correct copy of the foregoing Answer of the State of Mississippi To Third-Party Complaint to Honorable Gary Keyser, Assistant Attorney General, State of Louisiana, 7434 Perkins Road, Baton Rouge, Louisiana 70808; Mr. Robert R. Bailess, Mr. Geoffrey C. Morgan, Wheeless, Beanland, Shappley & Bailess, P. O. Box 991, Vicksburg, Mississippi 39180; Mr. George F. Fox, Jr., McIntosh, Fox & Lancaster, 301 Morgan Street, Lake Providence, Louisiana 71254; Archie L. Jefferson, 820 Second Street, New Orleans, Louisiana 70130; William F. Naff, 312 McLure Street, Tallulah, Louisiana 71282; Hines H. Baker, Jr., Suite 3442, Interfirst Plaza, 1100 Louisiana Street, Houston, Texas 77002-5217 and M. E. Ward, P. O. Box 789, Vicksburg, Mississippi 39180.

This the 7th day of January, 1988.

Helen Wetherbee

B-9083,100,9-88

Supreme Court, U.S.
FILED
NOV 4 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 114, Original

In the Supreme Court of the United States

OCTOBER TERM, 1988

STATE OF LOUISIANA,
Plaintiff,

vs.

STATE OF MISSISSIPPI, ET AL.,
Defendants.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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State of Mississippi

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MITCHELL EMMETT WARD
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Telephone: (601) 636-6565
Attorneys for Defendants

November, 1988

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTION PRESENTED

Whether Louisiana's Motion for Leave to File Complaint should be granted in view of the pending federal district court action which involves the same identical controversy with numerous other parties.

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Mississippi v. Arkansas, 415 U.S. 289 (1974) 4
Nebraska v. Iowa, 406 U.S. 117 (1972) 4
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Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657 (1838) 4

Constitutional Provisions and Statutes

U. S. Const. Art. III, §2, cl. 2 ..... 1, 4
28 U.S.C. §1251(a) 1, 2, 4

APPENDIX

EXHIBITS:

"A"—Intervention of State of Louisiana and Lake Providence Port Commission in Case of *Julia Donelson Houston, et al v. Ruth M. Thomas, et al,* United States District Court for the Southern District of Mississippi, Western Division A1

"B"—Third-Party Complaint of State of Louisiana and Lake Providence Port Commission in Case of *Julia Donelson Houston, et al v. Ruth M. Thomas, et al,* United States District Court for the Southern District of Mississippi, Western Division A7

No. 114, Original

In the Supreme Court of the United States

OCTOBER TERM, 1988

STATE OF LOUISIANA,
Plaintiff,

vs.

STATE OF MISSISSIPPI, ET AL.,
Defendants.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

The State of Mississippi and Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, Deceased, and Ruth Houston Baker, Individually [hereinafter sometimes referred to as Mississippi], the defendants in this original action, respectfully submit this brief in opposition to the Motion for Leave to File Complaint filed in this action on September 14, 1988, by the plaintiff, the State of Louisiana [hereinafter referred to as Louisiana].

JURISDICTION

Louisiana invokes the original jurisdiction of this Court under Article III, Section 2, Clause 2, of the United States Constitution and 28 U.S.C. §1251(a). Complaint ¶1.

U. S. Const. Art. III, §2, cl. 2 provides in pertinent part:

> In all Cases . . . in which a State shall be a Party, the supreme Court shall have original Jurisdiction . . .

28 U.S.C. §1251(a) provides:

> The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

STATEMENT OF THE CASE

Louisiana seeks leave of this Court to file its complaint against Mississippi and Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, Deceased, and Ruth Houston Baker, Individually, who own lands in Issaquena County, Mississippi which lie in the Mississippi River adjacent to East Carroll Parish, Louisiana. Louisiana seeks an adjudication of the boundary line between Louisiana and Mississippi in the area of Stack Island, Mississippi and between East Carroll Parish, Louisiana and Issaquena County, Mississippi.

In a civil action presently pending in the United States District Court for the Southern District of Mississippi, Julia Donelson Houston, et al v. Ruth M. Thomas, et al, Civil Action No. W86-0080(B), the plaintiffs seek an adjudication that they are the owners in fee simple of the lands described in the Complaint, that the defendants have no rights in the said lands and that the District Court remove and cancel all clouds existing on the lands of Houston.

Though not an original defendant to the lower court proceedings, Louisiana filed a Motion to Intervene in the suit on June 17, 1987. The Court ordered the inter-

vention on June 30, 1987. After intervening in the District Court action, Louisiana proceeded to file, on July 30, 1987, its Intervention, a true copy of which is attached hereto as Exhibit "A".

Thereafter, Louisiana chose to file a Third Party Complaint against the State of Mississippi on November 24, 1987. A true copy of the Third Party Complaint is attached hereto as Exhibit "B".

Louisiana, in its Motion to Intervene, its Intervention, its Motion for Leave to File Third Party Complaint and its Third Party Complaint, chose not to raise the question of jurisdiction in the District Court. In its Intervention and in its Third Party Complaint, Louisiana prayed as follows:

> (1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein . . .
>
> (2) That upon a final hearing hereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants, intervenors and third party defendant, the State of Mississippi, and further declaring the rights and other legal relations as between the parties.

Louisiana then filed, on September 14, 1988, its Motion to File Complaint, Complaint and Application for Stay Order, and Brief in Support of Motion, Complaint and Application for Stay Order. This Court denied the Application for Stay Order on October 3, 1988.

ARGUMENT

This action is within this Court's original jurisdiction under Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. §1251(a). Indeed, this Court has, on numerous occasions, exercised original jurisdiction over boundary disputes between states. *E.g.*, *Ohio v. Kentucky*, 100 S.Ct. 588 (1980); *Mississippi v. Arkansas*, 415 U.S. 289 (1974); *Nebraska v. Iowa*, 406 U.S. 117 (1972); *Louisiana v. Mississippi*, 384 U.S. 24 (1966); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657 (1838). Here, however, the Motion for Leave to File Complaint should be denied because of the pendency of the United States District Court action. (This Court has already denied Louisiana's Application for Stay Order by Order entered October 3, 1988.)

In *Arizona v. New Mexico*, 425 U.S. 794 (1976), this Court denied the motion of Arizona for leave to file a bill of complaint by concluding: "In the circumstances of this case, we are persuaded that the pending state-court action provides an appropriate forum in which the *issues* tendered here may be litigated." *Id.* at 797 (emphasis in original). The Court prefaced its holding by the following discussion of the invocation of the original jurisdiction:

> We recently reaffirmed that "our original jurisdiction should be invoked sparingly" in *Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972), where we additionally stated:
>
> > "We construe 28 U.S.C. §1251(a)(1), as we do Art. III, §2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appro-

> priate cases. And the question of what is appropriate concerns, of course, the seriousness and dignity of the claims; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer."

And, nearly, 40 years ago in *Massachusetts v. Missouri*, 308 U.S. 1, 18-19 (1939), the Court said:

> "In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State—the essential quality of the right asserted—but we must also inquire whether recourse to that jurisdiction . . . is necessary for the State's protection . . . . We have observed that the broad statement that a court having jurisdiction must exercise it . . . is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum."

See also *Washington v. General Motors Corp.*, 406 U.S. 109, 113-114 (1972).

425 U.S. at 796-797.

Here, Louisiana intervened in the federal district court and then filed its Third Party Complaint against

Mississippi. All necessary and indispensible parties are before the Court.

Here, Louisiana has an adequate forum to present its claims—the United States District Court for the Southern District of Mississippi—where the same issues are before the District Court. Louisiana chose its forum to litigate the issues. Louisiana intervened as a party in a District Court suit—a suit that was simply an action to remove cloud on title.

Houston brought the suit to establish the boundary line to their land. It is incidental that the boundary line is also alleged to be the State line. The boundary line could have been an established roadway or an inland stream.

A denial of the Louisiana motion would work no irreparable harm upon Louisiana, would avoid further glutting the docket of this Court, and would avoid the expense and delay occasioned by the appointment of a Special Master. The last action of this nature filed by Louisiana, in which a Special Master was appointed to try the issues, resulted in a cost to the parties for the fees of the Special Master alone in excess of $64,000.00. *Louisiana v. Mississippi*, 466 U.S. 921, 80 L.Ed.2d 175, 104 S.Ct. 1701. These judicial economics are particularly important as the proceedings were begun in the United States District Court in July, 1986. The proceedings are ready to proceed to trial before the District Court.

Here, justice is far better served by a trial in the lower court, with appropriate review, than by a trial before a Special Master whose rulings this Court simply cannot consider with the care and attention it should.

In the event any parties are dissatisfied with the result reached by the United States District Court, they have the recourse of the normal appellate process of federal courts, including the review in this Court on Writ of Certiorari.

CONCLUSION

For these reasons, the Court should deny the Motion for Leave to File Complaint and should remit the case to the United States District Court for the Southern District of Mississippi, Western Division, for further proceedings.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, counsel for the defendants, and a member of the Bar of the Supreme Court of the United States, hereby certifies that copies of the foregoing Brief In Opposition To Motion For Leave To File Complaint, and Appendix, have been served by depositing same in a United States mailbox with postage prepaid, addressed to:

Hon. Buddy Roemer
Governor of Louisiana
State Capitol
Baton Rouge, Louisiana 70804

Hon. William J. Guste, Jr.
Attorney General
State of Louisiana
State Capitol
Baton Rouge, Louisiana 70804

Hon. Gary L. Keyser
Hon. David C. Kimmel
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Archie L. Jefferson, Esq.
650 Poydras Street
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Mr. William F. Naff
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This 4th day of November, 1988.

ROBERT R. BAILESS

EXHIBIT A

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

INTERVENTION

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and files this Intervention, alleging the following:

NATURE OF ACTION

This is a civil action brought by plaintiffs under 28 USC 1332, alleging that plaintiffs are the owners in fee simple of a certain tract of land lying in Issaquena County, Mississippi, described with greater particularity in paragraph 52 of the Complaint to Remove Cloud. Plaintiffs allegedly derived their title to the said lands according to a chain of title described in paragraphs 54 et seq. of the original Complaint.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to 28 USC 1331, 1332, 2201 and 2202; as well as under the Constitution of the United States and an Act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found in Chapter 50 of the United States Statutes At Large, Volume 2, page 701; and, further, under the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80.

2. Venue is proper before this district court pursuant to 42 USC 1391(f)(1), inasmuch as a substantial part of the property that is the subject of the action is or may be situated within this judicial district.

DEFENDANTS

3. Defendants, as alleged by plaintiffs, are adult nonresidents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; unknown heirs at law; and residents and domiciliaries of the State of Louisiana.

4. Intervenors are the State of Louisiana and the Lake Providence Port Commission, an agency or instrumentality of the State of Louisiana under 28 USC 1603.

REFERENCE STATEMENT

5. The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint to Remove Cloud. The

plaintiffs are citizens of the State of Mississippi; adult non-residents of the State of Mississippi; domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law. The defendants are numerous and are named in paragraph 4-51, inclusive, it being alleged that none of them are residents of the State of Mississippi. However, it is noted that the Federal Deposit Insurance Corporation is named as both a plaintiff in the introductory statement and as a defendant in paragraph 47.

6. Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

7. In paragraph 55 and following paragraphs, plaintiffs allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward. Natural processes have caused Stack Island to now be attached to the west bank of the Mississippi River.

8. The real question in dispute between the plaintiffs, defendants and intervenors is the location of the boundary line between the State of Louisiana and the State of Mississippi for all periods of time pertinent to the issues set forth in plaintiffs' complaint. The determination of the boundary involves an interpretation of the acts of Congress setting forth the boundaries and the determination of the boundaries between the two states. This controversy further involves the Equal Footing Doctrine of the states of the United States; and it further appears to your intervenors, and it is so alleged, that the Treaty

of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80, is also involved in this controversy, and including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which determination can only be made pursuant to the Constitution of the United States and federal law involving a question of the interpretation and application of federal law and jurisdiction.

9. This controversy involves a dispute between citizens in different states having separate and independent claims, as well as a dispute between citizens of one state and the sovereign itself of another state, i.e., the State of Louisiana, and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana.

10. Plaintiffs' complaint appears to state a separate and independent claim as to each of the named defendants, with the possible exception of the Federal Deposit Insurance Corporation.

11. The amount in controversy as to each of the said defendants exceeds the sum of $10,000.00, exclusive of interest and costs, with respect to each such separate and independent claim as to each said defendant, including the State of Louisiana and the Lake Providence Port Commission, intervenors.

12. Intervenors show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission, and said intervenors are entitled to a declaration of their rights and other legal relations as against plaintiffs, pursuant to 28 USC 2201, et seq., and other applicable law,

as cited hereinabove and as may be found by the Court to be applicable to this cause.

WHEREFORE, intervenors, the State of Louisiana and Lake Providence Port Commission, respectfully pray:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

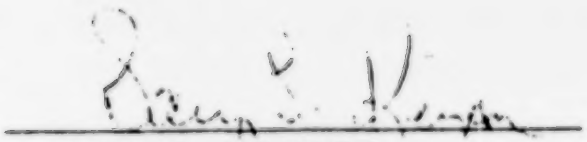
(2) That upon a final hearing hereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants and intervenors, and further declaring the rights and other legal relations as between the parties;

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,

STATE OF LOUISIANA

WILLIAM J. GUSTE, JR.
Attorney General



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Defendants, through counsel of record:

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EXHIBIT B

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western District

---

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

THIRD-PARTY COMPLAINT

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, Intervenors, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and file this Third-Party Complaint, naming the State of Mississippi as third-party defendant, as follows:

1.

The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint To Remove Cloud.

2.

The plaintiffs claim to be citizens of the State of Mississippi; adult non-residents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law.

3.

The defendants are numerous named individuals residing in the State of Louisiana, as set forth in paragraphs 4-51, inclusive of the complaint.

4.

Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

5.

On information and belief, defendants' title is derived from patents of the United States of America and from the State of Louisiana pursuant to its inherent sovereignty; under the Equal Footing Doctrine; and according to the Treaty of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the determination of boundaries. Accordingly, an interpretation of the said doctrines and treaty as they affect or may affect the boundary between the State of Mississippi and the State of Louisiana must be made pursuant to the

Constitution of the United States and federal law involving the question of the interpretation and application of federal law and jurisdiction.

6.

This controversy involves a dispute between citizens in different states having separate and independent claims; a dispute between citizens of one state and the sovereign itself of another state, i.e., the State of Louisiana and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana; as well as a dispute between two sovereigns, the State of Louisiana and the State of Mississippi, concerning the location of the boundary line between the two states.

7.

A final determination of this controversy will involve not only the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein, but also a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

8.

Third-party plaintiffs show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission; a large and substantial portion of the lands in question are owned by residents of the State of Louisiana; and, accordingly, said parties are entitled to a declaration of

their rights and other legal relations as against plaintiffs and third-party defendant, the State of Mississippi, as set forth hereinabove and as may be found by the Court to be applicable to this cause.

9.

Third-party plaintiffs show that a final determination will also involve the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein and, also, a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

WHEREFORE, third-party plaintiffs, the State of Louisiana and the Lake Providence Port Commission, respectfully pray for judgment against third-party defendant, the State of Mississippi, as follows:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

(2) That upon a final hearing thereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi, and further declaring the rights and other legal relations as between the parties; and

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,

STATE OF LOUISIANA

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SUPREME COURT OF THE UNITED STATES

STATE OF LOUISIANA, PLAINTIFF *v.*
STATE OF MISSISSIPPI ET AL.

MOTION FOR LEAVE TO FILE AND BILL OF COMPLAINT

No. 114, Orig. Decided December 12, 1988

The motion for leave to file a bill of complaint is denied.

JUSTICE WHITE, with whom JUSTICE STEVENS and JUSTICE SCALIA join, dissenting.

Louisiana's complaint against Mississippi is plainly within our original jurisdiction and alleges a boundary dispute with Mississippi, the very kind of a dispute that countless times the Court has accepted and adjudicated under its original jurisdiction. Furthermore, as 28 U. S. C. §1251(a) prescribes, the Court has exclusive jurisdiction over controversies between States. No other court may entertain Louisiana's complaint against Mississippi.

It is true that Louisiana intervened in a dispute between private parties over the ownership of land on an island in the Mississippi, claiming that the land was in that State. That suit might settle the dispute among the parties and the State, but a judgment that the island is in Louisiana would not bind Mississippi. For that reason, I suppose, Louisiana filed a third party complaint against Mississippi and also sought leave to file an original action in this Court. We prefer to have disputes within our original jurisdiction settled in other fora where possible. See, *e. g.*, *Arizona* v. *New Mexico*, 425 U. S. 794 (1976). But this boundary dispute between two States is exclusively our business and as such, may not be adjudicated in the District Court. Had Louisiana not intervened in the private action, denying leave to file would surely be indefensible. Perhaps denial of leave to file rests on the possibility that the private action will go forward with Louisiana as a party and that a judgment unfavorable to, but bind-

ing on, Louisiana will be entered. For me, however, this is no way to treat a sovereign State that wants its dispute with another State settled in this Court. I would grant leave to file.

JUSTICE BRENNAN took no part in the consideration or decision of this motion.